

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1391

B

UNITED STATES COURT OF APPEALS
For The Second Circuit

CRIMINAL APPEAL NO. 77-1391

UNITED STATES OF AMERICA,

Plaintiff- Appellee

vs.

JOSEPH H. DUPAW,

Defendant-Appellant

Appeal From The United States District Court
For the District of Vermont

APPELLANT'S APPENDIX

GEAR, KITTELL & DAVIS
WILLIAM C. KITTELL
5 Burlington Square
Burlington, VT 05402

BLODGETT & MCCARREN
STEPHEN S. BLODGETT
200 Main Street
Burlington, VT 05402
Attorneys for Defendant-
Appellant

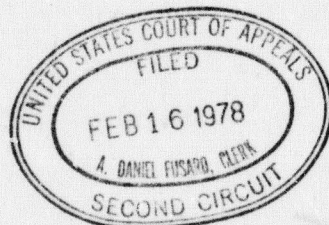


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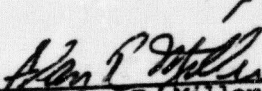
PROOF OF OFFICIAL RECORD

I, Alan R. Miller, hereby certify and attest that I am Executive Secretary of the Federal Deposit Insurance Corporation and that the annexed copy of an excerpt from the official records of the Corporation, marked "Exhibit 'A'", is a true and correct copy of the original entry in the official records of the Corporation. "Exhibit 'A'" certifies that effective September 6, 1974, The Merchants National Bank of Burlington, Burlington, Vermont, converted from a National bank to an insured State Nonmember bank, with the title "The Merchants Bank". I do hereby further certify that after diligent search no record or entry in the official records of the Federal Deposit Insurance Corporation is found to exist which terminated the status of The Merchants Bank as an insured bank under the provisions of section 8(a) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818(a)), and that I have the custody of the official records of the Federal Deposit Insurance Corporation, including the record, a copy of which is annexed hereto and attested by me.

DATED: January 24, 1977

(SEAL)

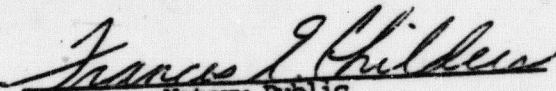
26251


Alan R. Miller
Executive Secretary
FEDERAL DEPOSIT INSURANCE CORPORATION

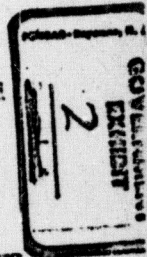
CITY OF WASHINGTON) ss
DISTRICT OF COLUMBIA)

I, Frances E. Childers, a Notary Public in and for the District of Columbia, hereby certify that Alan R. Miller is Executive Secretary of the Federal Deposit Insurance Corporation and has custody of the official records of the Federal Deposit Insurance Corporation; and I hereby further certify that I have a seal of office and have official duties in the District of Columbia where the aforesaid records are kept.

DATED: January 24, 1977


Notary Public
My commission expires: April 14, 1979

(SEAL)



FEDERAL DEPOSIT INSURANCE CORPORATION 2

DIVISION OF RESEARCH

October 1, 1974

NAME OF BANK

*The Merchants National Bank of Burlington
 Burlington, Vermont 05401
 (50-0240 - 03 - 06268-5)

EFFECTIVE DATE

September 6, 1974

ACTION TAKEN

Subject bank converted from a National bank to an insured State Nonmember bank, with the title

"The Merchants Bank"

Branches are operated at Barre, Bristol, Burlington (2), Essex Junction, Northfield, South Burlington (2) and South Hero, Vermont.

(Chittenden County)

Division of Research

By: Ruby K. Kingsbury

DISTRIBUTION

Secretary
 Office Copy (2)
 Regional Director (2)
 Review Section
 Central Files
 Bank Reports
 Fiscal Agent
 Information Office
 Review Section - Trust
 Report Control
 Div. of Bank Supv.

Address of Bank:
 123 Church Street
 Burlington, Vermont 05401.

CMH

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D. C.

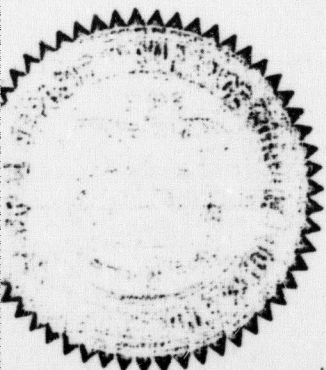
Hereby certifies that the deposits of each depositor in

THE MERCHANTS BANK

BURLINGTON

VERMONT

are insured to the maximum amount provided by the
Federal Deposit Insurance Act



No: 6268-5

In testimony whereof, witness my signature and the seal of the

Corporation this 6th day of September, 1974

Attest:

Alan R. Miller

EXECUTIVE SECRETARY

Frank Wille

CHAIRMAN OF THE BOARD OF DIRECTORS

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

JOSEPH H. DUPAW, a/k/a Red;
ANTHONY PERSUITTI;
BERNARD J. WOODMANSEE, SR.,
a/k/a Bernard J. Woodmansee;
BERNARD J. WOODMANSEE, JR.,
a/k/a Bernard J. Woodmansee,
a/k/a B.J., a/k/a Junior;
JEFFREY WALL

CRIMINAL NO. 77-19(S)

18 U.S.C. §§ 2113, 371
and 2

COUNT 1

The Grand Jury charges:

On or about the 27th day of March, 1976, in the District of Vermont, ANTHONY PERSUITTI, the defendant, and Paul E. Caruso, unlawfully, willfully and knowingly did enter and attempt to enter The Merchants Bank, White Street branch, South Burlington, Vermont, the deposits of which were then insured by the Federal Deposit Insurance Corporation, with intent to commit in said bank a felony affecting said bank, that is, the taking by force and violence and by intimidation from the presence of employees of said bank, money belonging to and in the care, custody, control, management and possession of the bank, and that JOSEPH H. DUPAW, a/k/a Red, the defendant, unlawfully, willfully and knowingly did aid, abet, counsel, command, induce and procure the commission of this offense by ANTHONY PERSUITTI and Paul E. Caruso; in violation of 18 U.S.C. § 2113(a) and 2.

COUNT 2

The Grand Jury further charges:

On or about the 29th day of April, 1976, in the District of Vermont, Douglas J. Ferrier and Paul E. Caruso did enter and attempt to enter the Franklin-Lamoille Bank, Milton, Vermont branch, the deposits of which were then insured by the Federal Deposit Insurance Corporation, with intent to commit in said bank a felony affecting said bank, that is, the taking by force and violence and by intimidation from the presence of employees of said bank, money belonging to and in the care, custody, control, management and possession of the bank, and that JOSEPH H. DUPAW, a/k/a Red, the defendant, unlawfully, willfully and knowingly did aid, abet, counsel, command, induce and procure the commission of this offense by Douglas J. Ferrier and Paul E. Caruso; in violation of 18 U.S.C. § 2113(a) and 2.

COUNT 3

The Grand Jury further charges:

On or about the 1st day of May, 1976, in the District of Vermont, Paul E. Caruso and Douglas J. Ferrier, by force and violence and by intimidation did take from the person and presence of Gerald R. Whalen, Cheryl Ann Ranney and Judy S. LeMay, employees of The Merchants Bank, White Street branch, South Burlington, Vermont, property, money and other things of value, to wit, approximately \$46,275.71 in cash, \$15,470.00 in American Express travelers checks, and \$14,390.00 in First National City Bank travelers checks, belonging to and in the care, custody, control, management and possession of The Merchants Bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and Paul E. Caruso and Douglas J. Ferrier in committing the aforesaid robbery did assault Gerald R. Whalen, Cheryl Ann Ranney and Judy S. LeMay and did put in jeopardy the lives of Gerald R. Whalen, Cheryl Ann Ranney and Judy S. LeMay by means of a dangerous weapon, to wit, a handgun, and that JOSEPH H. DUPAW, a/k/a Red, the defendant, unlawfully, willfully and knowingly did aid, abet, counsel, command, induce and procure the commission of this offense; in violation of 18 U.S.C. §§ 2113(a)(d) and 2.

7

COUNT 4

The Grand Jury further charges:

Between May 1, 1976 and July 1, 1976, in the District of Vermont, JOSEPH H. DUPAW, a/k/a Red, BERNARD J. WOODMANSEE, SR., a/k/a Bernard J. Woodmansee, and BERNARD J. WOODMANSEE, JR., a/k/a Bernard J. Woodmansee, a/k/a B.J., a/k/a Junior, the defendants, unlawfully, willfully and knowingly did receive, possess, conceal, store, barter, sell and dispose of money and other things of a value exceeding \$100.00, knowing the same to have been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of The Merchants Bank, White Street branch, South Burlington, Vermont, the deposits of which were then insured by the Federal Deposit Insurance Corporation at the time of such taking and carrying away, and JOSEPH H. DUPAW, a/k/a Red, BERNARD J. WOODMANSEE, SR., a/k/a Bernard J. Woodmansee, and BERNARD J. WOODMANSEE, JR., a/k/a Bernard J. Woodmansee, a/k/a B.J., a/k/a Junior, the defendants, knew said money and other things of value to have been so taken and carried away; in violation of 18 U.S.C. §§ 2113(c) and 2.

COUNT 5

The Grand Jury further charges:

From on or about January 1, 1976 up to and including March 31, 1977, in the District of Vermont and elsewhere, JOSEPH H. DUPAW, a/k/a Red, ANTHONY PERSUITTI, BERNARD J. WOODMANSEE, SR., a/k/a Bernard J. Woodmansee, BERNARD J. WOODMANSEE, JR., a/k/a Bernard J. Woodmansee, a/k/a B.J., a/k/a Junior, and JEFFREY WALL, the defendants, and Paul E. Caruso and Douglas J. Ferrier, named herein as co-conspirators, did combine, conspire, confederate and agree together with each other and with other persons to the grand jury known and unknown to commit an offense against the United States, to wit, to receive, possess, conceal, store, barter, sell and dispose of property and money and other things of value exceeding \$100, knowing the same to have been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of a bank; in violation of 18 U.S.C. § 2113.

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the District of Vermont:

1. On or about March 27, 1976 ANTHONY PERSUITTI, Paul E. Caruso and Douglas J. Ferrier met at REACH, Burlington, VT.
2. On April 29, 1976 Douglas J. Ferrier and Paul E. Caruso entered the Franklin-Lamoille Bank branch office in Milton, VT.
3. On April 30, 1976 Douglas J. Ferrier and Paul E. Caruso met at REACH, Burlington, VT.
4. On May 1, 1976 Paul E. Caruso met with JOSEPH H. DUPAW, a/k/a Red at the Chittenden Community Correctional Center, South Burlington, VT.

9

5. On or about May 6, 1976 BERNARD J. WOODMANSEE, SR.,
a/k/a Bernard J. Woodmansee, met with Paul E. Caruso in Essex
Jct., VT.

6. In May, 1976 Paul E. Caruso, JOSEPH H. DUPAW,
a/k/a Red, and BERNARD J. WOODMANSEE and JEFFREY WALL met in
Wincoski, VT.

7. On or about May 24, 1976 BERNARD J. WOODMANSEE, JR.,
a/k/a Bernard J. Woodmansee, a/k/a B.J., a/k/a Junior, delivered
\$1500 in cash to a bail bondsman.

(In violation of 18 U.S.C. § 371)

A TRUE BILL

Foreman

GEORGE W. F. COOK
United States Attorney

May 12, 1977
(Burlington)

CRIMINAL DOCKET - U.S. District Court

OFFENSE PO
OFFENSE MO
LETTER/OP Mis
FELONY Fel ☒ District Office

210 2 1006

Disp./Sentence

vs. DUPAW, JOSEPH H.
a/k/a Red

(LAST, FIRST, MIDDLE)

Case Filed
Mo Day
03 31
No. of Dets
* 5

77 00019

Yr Docket No

U.S. MAG.
CASE NO

BAIL • RELEASE

AMT ☐ Fugitiv
Set ☐ Pers. F
PSA
Date 04-25-77
10% De
X Surety
Bail Not Made
Status Changed
(See Docket) 3rd
Pry Cust

U.S. TITLE/SECTION

18:2113(c)

OFFENSES CHARGED

Poss. stolen property (4)

ORIGINAL COUNTS

1

18:371;2113(a) Consp. to commit offense(1,2,3,5)

4

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began *03-31-77	High Risk Date 03-31-77	PRO FORM 04-11-77	Trial Set For 6-13-77
Summons Served	Indict. Waived ☐	1st Plea 05-11-77	Voir Dire ☒
First Appearance	In Charging District	Final Plea 5-26-77	Trial Began 6-14-77
	Superseding Indict/info ☐		Trial Ended 7-22-77
		NG ☒ G ☐ NOL	
		G. Plea W/Drawn	
		NG ☒ G ☐ NOL	

Disposition of Charges
7-22-77
Convicted ☒
Acquitted ☐
Dismissed ☐
On Government's Motion ☐

SEARCH WARRANT	DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	INITIAL/NO.	OUTCOME
Summons Served			PRELIMINARY EXAMINATION		
Arrest Warrant Issued			REMOVAL HEARING		
COMPLAINT			WAIVED ☐ NOT WAIVED ☐		
OFFENSE			INTERVENING INDICTMENT ☐		

Cook
O'Neill

ATTORNEYS Defence 1 ☒ Ret ☐ Waived ☐ Sett ☐ None ☐ Other ☐ PD ☐

William C. Kittell, Esq., 864-4863
152 Bank St., Burlington, VT

Show last names and suffix numbers of other defendants on same indictment information.

Persutti 02; Woodmansee Sr. 03; Woodmansee Jr. 04; Wall 05

EXCLUDABLE DELA

- | DATE | DOCUMENT NO. | PROCEEDINGS |
|-------------|--------------|--|
| 1977 | | |
| 1. Mar. 31 | | Filed Indictment. |
| " " | | Filed Reocrd of Grand Jurors Concurring. |
| " " | | Issued warrant of Arrest. |
| 2. Apr. 1 | | Filed Order Specifying Methods and Conditions of Release. Deft. travel restricted to state of Vt. |
| 4. Apr. 4 | | Filed Magistrate's Final Commitment - Returned Served. |
| " 11 | | In Court before Judge Coffrin. Jerome O'Neill, Esq. for Govt.; Deft. present in Court, for Arraignment. (FC) |
| " " | | Court makes inquiries of deft. without counsel |
| " " | | Court enters plea of not guilty as to Counts 1-5. |
| " " | | ORDERED: Bail continued as previously fixed (\$20,000) |
| " " | | All motions to be filed by 5-2-77. |
| 8 " " | | Filed Financial Affidavit. |
| 19 " " | | " Appointment of Paul Jarvis, Esq. for Deft. |
| 18: Apr. 13 | | Filed Order - That counsel for the defendants shall file such motions as they desire by May 2, 1977. Copy mailed to attorneys. |

DATE		Cr. 77-19-1 U.S.A. vs. Dupaw, Persutti, Woodmansee, etc. (DOCUMENT NO.)	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
					Interval Section (a)	Start Date End Date (b)	Lr. Code (c)	Total Days (d)
1977								
3 April 18			Filed Defendant Joseph H. Dupaw's Motion for Reduction of Bail.					
4. " "			Filed Defendant Anthony Persutti's Request for Discovery.					
6 Apr. 20			Filed Defendant's Motion For Discovery and Inspection.					
7. " "			Filed Defendant's Memorandum In Support of Motion For Discovery and Inspection.					
8. " 21			Filed Government's opposition to motion for reduction of bail and Memorandum of points and authorities.					
Apr. 21			In Court before Judge Coffrin, hearing on defendants' motion for reduction of bail. Jerome O'Neill, Esq. for Government; William C. Kittell, Esq. for defendant.	3		04-21-77	E	
" "			Defendant present.					
" "			Statements made to Court by Mr. Kittell and by Mr. O'Neill.					
" "			Ordered: bail reduced to \$ 10,000.00 cash bail.	3		04-21-77	E	1
" "			Court suggests to counsel that Criminal Nos. 77-19-1 through 77-19-5 will be tried by Judge Holden at Brattleboro.					
2. Apr. 25			Filed Appearance Bond of Deft. Dupaw - \$10,000 Surety.					
3. Apr. 25			Filed Government's Notice of Readiness for Trial.					
8. May 3			Filed Defendant's Motion For Change Of Venue and Memorandum In Support Thereof.					
39. May 3			Filed Defendant's Motion For A Bill of Particulars.					
40. May 3			Filed Defendant's Memorandum of Law In Support of Motion For a Bill of Particulars.					
41. May 3			Filed Defendant's Motion To Add - that the former Motion For Discovery & Inspection, and supporting Memo be included in Cr. No. 77-22 also.					
42. May 3			Filed Defendant's Motion For A Psychiatric Examination.					
56 May 6			Filed Governments Consolidated Response to Discovery of all Defendants in the above captioned cases and Memorandum of points and authorities.					
67 " "			Filed Governments Bill of Particulars.					
68 " "			Filed Governments Response to Motion for Psychiatric Examination of Defendant Dupaw.					
" "			In open Court before Judge Holden. Jerome F. O'Neill, Asst. U. S. Attorney; William C. Kittell, Esq., Attorney for Defendant.					
" "			Hearing on Defendant's Motion for Discovery and Inspection.	3		05-06-77	E	
" "			Statements made to the Court by Mr. Kittell, followed					
FINE AND RESTITUTION PAYMENTS								
DATE		RECEIPT NUMBER	C.D. NUMBER	DATE		RECEIPT NUMBER	C.D. NUMBER	

DATE 1977		PROCEEDINGS (continued)	V. EXCLUDABLE C	
		(Document No.)	(a)	(b)
May 6		by Mr. O'Neill.		
" "		ORDERED: Motion denied.		
" "		Hearing on Defendant's Motion for Change of Venue.		
" "		Statements made to the Court by Mr. Kittell, followed by Mr. O'Neill.		
" "		ORDERED: Defendant's Motion for Change of Venue continued for further information to be presented by Mr. Kittell.		
" "		Statements made to the Court by Mr. Kittell re: to file motion for severance.		
" "		Statements made to the Court by Mr. Kittell re: Government appears to have complied with motions for discovery, followed by Mr. O'Neill.		
" "		ORDERED: Decision on Discovery Motions continued to Friday, May 13, 1977.		
" "		All further pretrial motions and hearings to be held on Friday, May 13, 1977.		
69	May 10	Filed Government's Consolidated Response To Discovery Motions of all Defendants in the Above-Captioned Cases and Memorandum of Points and Authorities.		
71	May 11	Filed Waiver of defendant Joseph Dupaw's presence.		
72	May 12	Filed superseding indictment.		
"	12	Filed record of grand jury concurring.		
73	" 13	Filed Government's Motion for a Protective Order.		
"	"	In open Court before Judge Holden. Jerome F. O'Neill, Asst. U.S. Attorney; William C. Kittell, Esq., Attorney for Defendant.		
"	"	HEARING ON DEFENDANT'S RENEWED MOTION FOR CHANGE OF VENUE.		
"	"	Statements made to the Court by Mr. Kittell.		
"	"	ORDERED: Motion denied.	3	05-13-77 E
"	"	HEARING ON DEFENDANT'S RENEWED MOTION FOR A PSYCHIATRIC EXAMINATION		
"	"	Statements made to the Court by Mr. Kittell.		
"	"	ORDERED: Motion denied.		
"	"	ORDERED: Government to furnish exculpatory material by June 8, 1977.		
"	"	GOVERNMENT'S MOTION FOR PROTECTIVE ORDER.	3	05-13-77 E
"	"	Decision reserved.		
78	"	Filed sealed F.B.I. record attached to P.73, at the direction of the Court.		
80	" 17	Filed Interlocutory Order - - defendants' motions for disclosure and identification of the witnesses denied. Government's motion for a protective order is granted. The material supplied by the Government for in camera inspection will be sealed by the court and preserved in its sealed condition in the records of the court to be made available to the appellate court in the event of an appeal.	3	05-17-77 E
		OVER		

DATE 1977	PROCEEDINGS (continued)	V. EXCLUDABLE DI		
		(a)	(b)	(c)
May 26	In open Court before Judge Holden. Jill Jacobson, Asst. U.S. Attorney; William C. Kittell, Esq., Attorney for Defendant.			
" "	Defendant present in Court with his Attorney, William C. Kittell, Esq., for arraignment on superseding indictment.			
" "	Court makes inquiry of defendant.			
" "	Defendant waived reading of the superseding indictment, was arraigned and plead not guilty to Counts 1, 2, 3, 4 and 5 of the superseding indictment.			
" "	Bail continued as previously set.			
" "	Statements made to the Court by Mr. Kittell re: superseding indictment.			
" "	Oral motion made by Mr. Kittell re: extension of time for discovery.	3	05-26-77	E
" "	ORDERED: Motion denied.	3	05-26-77	E
" "	Oral motion made by Mr. Kittell to dismiss original indictment.			
" "	Motion noted by the Court. Government given time to respond to the motion.			
82 " 31	Filed Petition for Writ of Habeas Corpus Ad Testificandum.			
June '1	Issued Writ of Habeas Corpus Ad Testificandum.			
83 " "	Filed one subpoena to testify.			
84 June 3	Filed Government's Disclosure.			
86 " 10	" Govt's Subpoena to Testify returned served.(3)			
87 " "	" Govt's Subpoena to Produce Document or Object returned served.			
" 13	A trial by jury was begun before Judge Holden. George W. F. Cook, U. S. Attorney, Jerome F. O'Neill, Asst. U.S. Attorney, William C. Kittell, Esq., Attorney for defendant Dupaw, John Sartore, Esq., Attorney for defendant Persutti, Duncan Kilmartin, Esq., Attorney for defendant Woodmansee, Sr., John Bergeron, Esq., Attorney for defendant Woodmansee, Jr.			
" "	In chambers. Attorneys present. A discussion was held between the Court and counsel re: Voir Dire.			
" "	Court will allow each defendant four challenges and the Government six challenges. Two alternates will be selected.			
" "	At Bench. Counsel present. Objection made by Mr. Sartore to the time allowed to view the jury questionnaires.			
" "	ORDERED: Defendant's counsel allowed to further view questionnaires at recess.			
" "	Statements by Mr. Kilmartin re: defendant Woodmansee, Sr.'s mental ability to stand trial.			
" "	A jury was impaneled by the Clerk.			
" "	ORDERED: that two alternate Jurors be impaneled by the Clerk and two alternate Jurors were impaneled by the Clerk.			
" "	The oath to Petit Jurors in Cr. cases was administered by the Clerk.			

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

Dupaw

14
Cr.77-19-1

Yr. | Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DE		
		(a)	(b)	(c)
1977	(Document No.)			
June 14	Trial resumed.			
" "	In chambers. Counsel present. A discussion was held between the Court and counsel re: certain questions to be asked witnesses.			
" "	In Court. Jury present. Counsel present.			
" "	The Court polled the jury re: discussion with any other person about this case. The jury responded in the negative. General instructions were given the jury by the Court.			
" "	Opening statements made to the jury by Mr. O'Neill, followed by Mr. Kittell, Mr. Sartore.			
" "	Opening statements reserved by defendant Woodmansee, Sr.			
" "	Opening statements made to the Jury by Mr. Bergeron.			
" "	The following witnesses, sworn by Clerk, were examined: Dora Jackson, Gerald Raymond Whalen, Frederick R. McGibney, Curtis A. Utton.			
" "	Motion made by Mr. Kittell to strike Exhibit No. 3.			
" "	ORDERED: Motion denied.			
" "	The following witnesses, sworn by Clerk, were examined: Robert A. McGibney, recalled, Dallan Baker, Beatrice C. Bergeron, Ephrem Berteau.			
" 15	Trial resumed.			
" "	In chambers. Counsel present. A discussion was held between the Court and counsel. Fred I. Parker, Esq., Attorney for defendant Wall present.			
" "	Statements made to the Court by Mr. Sartore re: late arrival of 3500 material, joined in by Mr. Kilmartin, followed by Mr. O'Neill in opposition.			
" "	Motion made by Mr. Kittell for dismissal or mistrial or in the alternative to disqualify the Judge, joined in by Mr. Sartore, Mr. Kilmartin.			
" "	ORDERED: Motion to dismiss reserved.			
" "	Statements made to the Court by Mr. Parker re: discussions prior to grand jury proceeding and discovery hearings in re: defendant Wall, concurred in by Mr. O'Neill.			
" "	ORDERED: Motion to dismiss denied. Motion for disqualification of the Judge to be presented in an orderly fashion by written motions.			
" "	Jeffrey B. Wall, sworn by Clerk, was examined.			
" "	At 11:30 A.M. the jury was excused from the Courtroom to enable the Court to hear motions.			
" "	Statements made to the Court by Mr. O'Neill re: impeachment of witness Jeffrey Wall, followed by Mr. Kittell, Mr. Sartore, Mr. Kilmartin, Mr. Bergeron in opposition.			
" "	ORDERED: Motion denied on Government's Motion In Limine. The court to rule as problems present themselves.			
" "	ORDERED: Objections presented to the Court by Mr. Kittell to be considered as an objection by all counsel unless verbally voiced by other counsel.			

AO-257

Interval (per Section 11) | Start Date | End Date | Ltr. Code

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

Dupaw

15
77-19-1

Yr. | Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE D		
		(a)	(b)	(c)
1977	(Document No.)			
June 15	Motion made by Mr. Kittell to have witness Wall have urine samples taken during noon recess to establish content of drugs, if any, followed by Mr. O'Neill in opposition.			
" "	ORDERED. Motion denied.			
" "	Statements made to the Court by Mr. Parker re: exercising of 5th Amendment rights of Mr. Wall.			
" "	ORDERED: Witness to claim 5th Amendment rights on his own initiative. Witness allowed to confer with his counsel before continuing.			
" "	Cheryl Ranney, Sworn by Clerk, was examined.			
" "	Jeffrey B. Wall, resumed the stand, and was further examined.			
" 16	Trial resumed.			
" "	In Chambers. Counsel present and Fred Parker, Esq.			
" "	A discussion was held between the Court and counsel.			
" "	Statements made to the Court by Mr. O'Neill re: Witness Protection Act.			
" "	In Court. Jury and counsel present.			
" "	Jeffrey Wall, resumed the stand and was further cross examined.			
" "	Jury excused from the Courtroom. Counsel present.			
" "	Motion made by Mr. Kilmartin on behalf of all defendants for a mistrial or in the alternative to question U.S. Marshal and Jurors 1 and 2 re: conversations between Jurors 1 and 2 and between witness Wall and the U.S. Marshal and to have a voir dire conducted of the U.S. Marshal and Jurors 1 and 2.			
" "	Statements made to the Court by Mr. Kittell re: taped conversations of Defendant Dupaw and for a copy of said conversation, followed by Mr. O'Neill re: relevance.			
" "	Decision reserved.			
" "	Motion made by Mr. Kittell to sever, followed by Mr. O'Neill in opposition.			
" "	Motion made by Mr. Sartore to sever, joined in by Mr. Bergeron.			
" "	Motion made by Mr. Kilmartin to disallow the Government from presenting testimony out of the hearing of the jury, followed by Mr. O'Neill, Mr. Kittell.			
" "	Motion made by Mr. Kittell to have a summary of the tape before testimony out of the jury's presence.			
" "	Objections noted.			
" "	ORDERED: Motion of defendants Persutti and Woodmansee, Jr., denied.			
" "	Testimony of Jeffrey Wall taken out of the presence of the jury. Examination by Mr. O'Neill.			
" "	Court makes inquiry of Mr. O'Neill.			
" "	ORDERED: Government's offer excluded until the Government supplies transcript of taped conversation.			
	OVER			

AO-257

Interval (per Section II) | Start Date | End Date | Ltr. Code

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE C		
		(a)	(b)	(c)
1977	(Document No.)			
June 16	Request made by Mr. Kilmartin for partial transcript of Jeffrey Wall's testimony.			
" "	ORDERED: Request granted. Particular areas to be specified by counsel.			
" "	Private voir dire conducted by the Court of jurors one and two with the Court Reporter present.			
" "	In chambers. Counsel present. Court advises counsel of voir dire conducted by the court of jurors one and two, that there was no pertinent conversation to this case involved.			
" "	A discussion was held between the Court and counsel.			
" "	In Court. Jury and counsel present.			
" "	Examination of Mr. Wall continued.			
" 17	Trial resumed.			
" "	In chambers. Counsel present.			
" "	A discussion was held between the Court and counsel.			
" "	Motion made by Mr. O'Neill to strike certain testimony of cross examination of Mr. Wall by Mr. Kittell.			
" "	ORDERED: Motion to strike denied.			
" "	In Court. Jury and counsel present.			
" "	Jeffrey Wall resumed the stand and was further examined:			
" "	At Bench. Counsel present. Motion made by Mr. Kilmartin for a psychiatric examination of Mr. Wall.			
" "	ORDERED: Motion denied.			
" "	The following witnesses, sworn by Clerk were examined: Alfred James Blondin, Judy LeMay, Mary Jane Levee.			
" "	Jury excused from the courtroom. Counsel present.			
" "	A discussion was held between the Court and counsel.			
" "	Jury present. Counsel present.			
" "	The following witnesses, sworn by Clerk, were examined: Marie B. Robear, Cosmos Gilberti, III.			
" 20	Trial resumed.			
" "	The Court polled the jury re: discussion with any other person or reading material concerning this case.			
" "	John S. Savo, Sworn by Clerk, was examined.			
" "	Jury excused from the courtroom. Counsel present.			
" "	Statements made to the Court by Mr. Bergeron, re: Witness Savo's criminal record, followed by Mr. Cook.			
" "	In Court. Jury present and counsel present.			
" "	Examination of Mr. Savo continued.			
" "	The following witnesses, sworn by Clerk, were examined: Howard R. McMaster, Fred P. List, Carol Tomkowicz, Tom Dwyer.			
" 21	Trial resumed. In chambers. Counsel present.			
" "	Statements made to the Court by Mr. O'Neill re: playing of tapes to the jury, followed by Mr. Kittell.			
" "	A discussion was held between the Court and counsel.			
" "	In Court. Jury and counsel present. The Court polled the jury re: exposure to the case via the media. The jury responded in the negative.			
	Over			

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE D		
		(a)	(b)	(c)
1977	(Document No.)			
June 21	Paul Eugene Caruso, Sworn by Clerk, was examined.			
" "	Testimony of Mr. Caruso suspended.			
" "	Michael Zabowsky, Sworn by Clerk, was examined.			
" 22	Trial resumed.			
" "	The Court polled the jury re: discussions of this case. The jury responded in the negative.			
" "	Michael Zabowski resumed the stand and was further examined.			
" "	In chambers. Counsel present. A discussion was held between the Court and Counsel re: excising of transcript of tapes.			
" "	Defendants Persutti, Woodmansee, Sr., Woodmansee, Jr. waived their right to be present in the courtroom during the playing of the tapes relating to defendant Dupaw.			
" "	In Court. Jury and counsel present.			
" "	Government Exhibits 32, 33, 34 and 35 played to the jury.			
" "	At Bench. Counsel present. Motion made by Mr. Kilmartin for mistrial.			
" "	ORDERED: Motion denied.			
" "	In Court. Jury and counsel present.			
" "	Paul Eugene Caruso, resumed the stand and was further examined.			
" "	Jury excused for the day.			
" "	In Court. Counsel present.			
" "	Motion made by Mr. Kilmartin to have exhibits impounded by the Court during recess.			
" "	ORDERED: Blanket impoundment of exhibits denied. Exhibits agreed by counsel to be impounded.			
91 " 23	Filed Subpoena to Produce Document or Object, returned served.			
" "	Trial resumed.			
" "	Frederick A. Flory, Sworn by Clerk, was examined.			
" "	Paul Eugene Caruso, resumed the stand and was further examined.			
92 " 27	Filed two Subpoena's to Testify, returned served.			
93 " "	Filed two Subpoena's to Produce Document or Object - returned served.			
" "	Trial resumed.			
" "	In chambers. Counsel present. A discussion was held between the Court and Counsel.			
" "	Motion made by Mr. Kittell for continuance for one day.			
" "	ORDERED: Motion denied.			
" "	In Court. Jury and Counsel present.			
" "	Paul Eugene Caruso, resumed the stand and was further examined.			
" "	In Court. Jury excused from the courtroom. Counsel present.			
" "	Statements made to the Court by Mr. Kittell re: letters written by Mr. Caruso.			
" "	ORDERED: Letters to be turned over to U.S. Attorney			

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S.A. vs. Dupaw

Cr. 77-19-1

18

DATE 1977	PROCEEDINGS (continued)	V. EXCLUDABLE D		
		(a)	(b)	(c)
June 27	(Document No.) A discussion was held between the Court and Counsel. In Court. Jury and Counsel present.			
" "	Mr. Caruso resumed the stand and was further examined.			
" 28	Trial resumed.			
" "	Examination of Mr. Caruso continued by Mr. O'Neill.			
" "	The following witnesses, sworn by Clerk, were examined: Robert J. Hawley, Norman J. Rawding, Thomas Henry Hannigan, Kenneth Richard Bailey, John E. King, Charles Villemaire, John E. King, resumed the stand, Robert Paul, James J. Fish.			
" "	In Chambers. Counsel present. A discussion was held between the Court and counsel.			
" "	In Court. Jury and Counsel present.			
" "	Fred List, recalled, was further examined.			
" "	Trial resumed.			
" "	In chambers. Counsel present. A discussion was held between the Court and Counsel re: testimony of Paul Caruso and Douglas Ferrier.			
" "	Motion made by Mr. Kilmartin for Motion to Sever, followed by Mr. O'Neill in opposition.			
" "	ORDERED: Motion for severance denied.			
" "	Statements made to the Court by Mr. Kittell re: sur- veillance of defendant Dupaw, followed by Mr. O'Neill that the Government is not aware of any surveillance activity by the Government.			
" "	Statements made to the Court by Mr. Kittell re: suppression of evidence, followed by Mr. O'Neill in opposition.			
" "	The Court states it will not act on suppression of evidence at this time. The Court will act on admissibility at the proper time.			
" "	In Court. Jury and counsel present.			
" "	The Court made inquiry of the jury as to discussions and exposure to the news media. The jury re- sponded in the negative.			
" "	Douglas Ferrier, Sworn by Clerk, was examined.			
" "	John Malley, Esq., Attorney for Mr. Ferrier present.			
" "	In Chambers. Counsel present. Mr. Malley present.			
" "	Statements made to the Court by Mr. Kittell re: testimony of other witnesses reaching witness Ferrier, followed by Mr. Malley, Mr. O'Neill.			
" "	A discussion was held between the Court and counsel.			
" "	Statements made to the Court by Mr. Malley re: con- ferences between Mr. Ferrier and Mr. Malley.			
" "	In Court. Jury, counsel, John Malley, Esq. present.			
" "	Examination of Mr. Ferrier resumed by Mr. Kittell.			
" 30	Trial resumed.			
" "	In chambers. Counsel present. Statements made to the Court by Mr. Kittell re: sequestration.			
" "	Motion made by Mr. Kittell for Mistrial or to Dismiss, followed by Mr. O'Neill.			
" "	ORDERED: Motion denied.			
" "	In Court. Jury and counsel present.			
" "	The Court polled the jury re: exposure to new media. The jury responded in the negative.			

DATE	PROCEEDINGS (continued)		V. EXCLUDABLE D		
			(a)	(b)	(c)
1977	(Document No.)				
June 30	The Court advised the jury that the case against defendant Bernard Woodmansee, Jr. had been disposed of.				
" "	Douglas Ferrier, resumed the stand and was further examined.				
" "	John Moriarty, out of time, was sworn and examined.				
" "	Douglas Ferrier, resumed the stand and was further examined.				
July 1	Trial resumed.				
" "	In chambers. Counsel present. A discussion was held between the court and counsel re: news media report on change of plea of defendant Woodmansee, Jr.				
" "	In Court. Jury and counsel present. The jury was polled by the Court re: news media information and the jury responded in the negative. The Court instructed the jury not to read any newspapers over the long holiday weekend.				
" "	Douglas Ferrier, resumed the stand and was further examined.				
95 " 5	Filed Government's Request to Charge and Trial Memorandum.				
96 " "	Filed Government's Memorandum in Support of Admission of Statements made by Defendant Dupaw and Memorandum of points and Authorities.				
97 " "	Filed Order - - that the file maintained by the Commissioner of Corrections, concerning Joseph H. Dupaw, be made available to counsel for the defendant Dupaw for use in the pending trial.				
" "	Trial resumed.				
" "	In chambers. Counsel present. A discussion was held between the Court and Counsel.				
" "	In Court. Jury and Counsel present.				
" "	The Court polled the jury re: news media. The jury responded in the negative.				
" "	Catherine A. Cusack, was sworn by Clerk and examined.				
" "	Douglas Ferrier, resumed the stand, and was further examined.				
98 " "	Filed Subpoena to Produce Document or Object - returned served.				
" 6	Trial resumed.				
" "	Douglas Ferrier, resumed the stand and was further examined.				
" "	Michael Zabowsky, recalled, was further examined.				
" "	Jury excused from the courtroom. Counsel present.				
" "	A discussion was held between the Court and Counsel re: admission of material by the Government.				
" "	In chambers. Counsel present. Further discussion held between the Court and counsel.				
" "	In Court. Jury not present. Counsel present.				
" "	Defendant Dupaw conceded voluntary statement to FBI				
" "	Jury present. Counsel present. Examination of Mr. Zabowsky continued.				
" "	Albert O. Axton, Sworn by Clerk, was examined.				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S.A. vs. Dupaw Cr. 77-19-1

20

DATE 1977	PROCEEDINGS (continued)	V. EXCLUDABLE DI		
		(a)	(b)	(c)
July 6	In Court. Jury not present. Counsel present. A discussion was held between the Court and counsel.			
" "	At 4:30 P.M. Government rest.			
" "	Motion made by Mr. Kittell for directed verdict of acquittal, followed by Mr. O'Neill in opposition.			
" "	Decision reserved.			
" "	Motion made by Mr. Sartore for directed verdict of acquittal as to defendant Persutti.			
" "	ORDERED: Motion denied.			
" "	Motion made by Mr. Kilmartin for directed verdict of acquittal as to defendant Woodmansee, Sr.			
" "	ORDERED: Motion denied.			
" "	Motion of defendant Dupaw denied as to Counts 1, 3, 4 and 5. Reserved as to Count 2.			
" 7	Trial resumed.			
" "	In chambers. Counsel present.			
" "	Statements made by Mr. O'Neill, to the Court re: to admit additional information. A discussion was held between the Court and counsel.			
" "	ORDERED: Motion denied.			
" "	In Court. Counsel present. Jury not present.			
" "	ORDERED: Motion of defendant Dupaw to dismiss Count 2, granted. Counts 1, 3, 4 & 5 denied.			
" "	In Court. Jury present. Counsel present.			
" "	Joseph H. Dupaw, Sworn by Clerk, was examined by Mr. Kittell.			
" "	Raymond C. Mage, Sworn by Clerk, out of time, was examined.			
" "	Joseph H. Dupaw, resumed the stand and was further examined.			
" 8	Trial resumed.			
" "	In chambers. Counsel present. A discussion was held between the Court and Counsel.			
" "	In Court. Jury and counsel present.			
" "	Curtis A. Utton, called on behalf of defendant Persutti, was examined.			
" "	In chambers. Counsel present. A discussion was held between the Court and counsel.			
" "	In Court. Jury and counsel present.			
" "	Richard E. Fletcher, sworn by Clerk, out of time, was examined on behalf of defendant Woodmansee, Sr.			
" "	Joseph H. Dupaw, resumed the stand and was further examined by Mr. O'Neill.			
" 11	Trial resumed.			
" "	The following witnesses, sworn by Clerk, were examined: Carl E. Collins, Jr., Randolph J. Brock, III, Michael Charles Vinton.			
" "	Joseph H. Dupaw, resumed the stand and was further examined.			
" 12	Trial resumed.			
SA " "	Filed Defendant Dupaw's Requested Jury Charge on Conspiracy.			
" "	Joseph H. Dupaw, resumed the stand and was further examined.			

DATE 1977		PROCEEDINGS (continued)	V. EXCLUDABLE D		
		(Document No.)	(a)	(b)	(c)
99	July 12	Anthony Persutti, Sworn by Clerk, was examined.			
100	" "	Filed three Government Subpoenas returned served.			
101	" "	Filed two Government Subpoenas to Produce Document or Object returned served.			
	" "	Filed four Defendant Subpoenas to Produce Document or Object returned served.			
	" 13	Trial resumed.			
	" "	In Chambers. Counsel present. A discussion was held between the Court and Counsel.			
	" "	Motion made by Mr. Kittell for a mistrial and, or to dismiss.			
	" "	ORDERED: Motions for a mistrial and to dismiss denied.			
	" "	In Court. Counsel present. Jury not present.			
	" "	Objections made by Mr. Kilmartin to certain deposition testimony given by Dr. Flannigan.			
	" "	The Court ruled as to the admissibility of said testimony.			
	" "	Jury present. Anthony Persutti, resumed the stand and was further examined.			
	" "	Deposition of Martin Flannigan, M.D. was read to the jury.			
	" "	Michael Zabowski, recalled by defendant Persutti, was examined.			
	" "	Defendant Persutti rest.			
	" "	Opening statements made to they jury by Mr. Kilmartin.			
102	" "	Virginia Reynolds, Sworn by Clerk, was examined.			
	" "	Filed Government's Supplemental Requests to Charge of the U.S. and Trial Memorandum.			
	" 14	Trial resumed.			
	" "	In chambers. Counsel present. A discussion was held between the Court and counsel re: to strike the testimony of a conviction of Persutti.			
	" "	In Court. Counsel present.			
	" "	Motion made by Mr. Kittell to have transcript of defendant Dupaw's testimony.			
	" "	ORDERED: Motion denied. Court reporter to furnish transcript if possible.			
	" "	Jury present.			
	" "	Virginia Reynolds, resumed the stand and was further examined.			
103	" "	Filed Order, effective July 11, 1977, application of defendant Woodmansee, Sr. for a subpoena for the attendance of Randolph Brock, III, is granted. The Clerk shall issue said subpoena.			
104	" "	Filed Order, effective July 8, 1977, application of defendant Woodmansee, Sr. for a subpoena for the attendance of Richard E. Fletcher, is granted. The Clerk shall issue said subpoena.			
105	" "	Filed Order, effective July 7, 1977, application of defendant Persutti for a subpoena for the attendance of Lieutenant Ray C. Magee, is granted. The Clerk shall issue said subpoena.			
OVER					

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S.A. vs. Dupaw

Cr. 77-19-1.

DATE 1977	PROCEEDINGS (continued)		V. EXCLUDABLE DE		
			(a)	(b)	(c)
106 July 14	(Document No :)	Filed Order, July 13, 1977, application of defendant Woodmansee, Sr., for a subpoena for the attendance of Virginia Reynolds, is granted. The Clerk shall issue said subpoena.			
107 " "		Filed Order, effective July 11, 1977, application of defendant Woodmansee, Sr., for a subpoena for the attendance of Corporal Michael C. Vinton, is granted. The Clerk shall issue said subpoena.			
" "		In Chambers. Counsel present.			
" "		A discussion was held between the Court and counsel re: offer of Government's 80 for identification.			
" "		ORDERED: Government's 30 received as an exhibit.			
" "		In Court. Jury and counsel present.			
" "		Michael Zabowski, recalled, was further examined.			
" "		At 3:30 A.M. all defendants rest.			
" "		The following witnesses, called in rebuttal, were sworn by Clerk, and examined: Herbert Sinkinson, Merle Hamilton.			
108 " "		Filed Authorization for trial transcript.			
109 " "		Filed Order - - that material in files of Chittenden Community Correctional Center, with respect to Anthony Persutti, be made available to counsel for the U.S. for use in the pending case.			
" 15		Trial resumed.			
" "		At Bench. Counsel present. Motion made by Mr. Kittell to dismiss case of defendant Dupaw.			
" "		ORDERED: Motion denied.			
" "		The following witnesses, called in rebuttal, were examined: Albert O. Axton, Michael Zabowski.			
" "		Government rest it's rebuttal.			
" "		The following witnesses, called in sur-rebuttal, were examined: Virginia Reynolds, Bernard Woodmansee, Sr.			
" "		Jury excused. In Court. Counsel present.			
" "		Motion renewed by Mr. Kittell for directed verdict of acquittal, followed by Mr. O'Neill.			
" "		ORDERED: Motion for verdict of acquittal as to defendant Dupaw, denied.			
" "		Motion renewed by Mr. Sartore for verdict of acquittal, followed by Mr. O'Neill.			
" "		ORDERED: Motion ofr verdict of acquittal as to defendant Persutti, denied.			
" "		Motion renewed by Mr. Kilmartin for directed verdict of acquittal.			
" "		ORDERED: Motion for verdict of acquittal as to defendant Woodmansee, Sr., denied.			
" "		In chambers. Counsel present. A request to charge conference was held.			
" 18		Trial resumed. In chambers. Counsel present. A discussion was held between the Court and counsel.			
" "		In Court. Jury and counsel present. Closing arguments made to the jury by Mr. Cook, Mr. Kittell, Mr. Sartore, Mr. Kilmartin, Mr. O'Neill.			
" "		ORDERED: That the jury be sequestered.			
" 19		Trial resumed.			
" "		ORDERED: that John E. Lynch, be appointed Foreman of the jury.			

DATE 1977	PROCEEDINGS (continued)		V. EXCLUDABLE DI		
	(Document No.)		(a)	(b)	(c)
July 19		At 9:10 A.M. the Court commenced its charge to the jury, concluding at 10:55 A.M. .			
" "		ORDERED: That two alternate jurors be excused from further consideration of the case.			
" "		Christian Hansen, Jr., Nancy C. Hansen, Paul G. Dingler, Alan Barber, were sworn by Clerk, as officers in charge of the jury.			
110	" "	Filed Court Exhibit # 1.			
" "		At 7:45 P.M. the jury came into Court requesting testimony be read.			
" "		ORDERED: That testimony be read to the jury tomorrow morning, and that, at this time, the jury be allowed to retire for the night.			
111	" 20	Filed four Government Subpoenas to Produce Document or Object, returned served.			
112	" "	Filed two defendant Persutti Subpoenas to Produce Document or Object, returned served.			
113	" "	Filed two Subpoenas to Testify, defendant Woodmansee, Sr., returned served.			
" "		Trial resumed.			
" "		In Court. Jury and Counsel present. Testimony of Mr. Wall, Mr. Caruso, Mr. Savo, Mr. Dwyer, read to the Jury by the Court Reporter. After receiving same, the jury retired to further deliberate the case.			
" "		At 4:30 P.M. the jury came into Court to ask for further instructions, after receiving same, they retired to further deliberate the case.			
" "		At 7:30 P.M. it was ORDERED: that the jury be allowed to retire for the night.			
" 21		Trial resumed.			
" "		At 12:20 P.M. the jury came into Court requesting testimony be read. The jury was excused for lunch. At 2:20 P.M. the jury came into Court to have testimony read to them by the Court Reporter. Having received same, they again returned to deliberate the case.			
" "		At 6:15 P.M. the jury came into Court to have testimony read by the Court Reporter. Having received same, they again returned to deliberate the case.			
114	" "	Filed Order, effective July 5, 1977, application of defendant Persutti, for a subpoena for the attendance of Catherine Collins and Steve Maranville, is granted. The Clerk shall issue said subpoena. Copy furnished attorneys.			
" 22		In open Court. Jury and Counsel present.			
" "		At 11:25 the jury came into Court and reported a verdict of guilty as to counts 1, 3, 4 and 5 as to defendant Dupaw.			
" "		Guilty as to counts 1 and 5 as to defendant Persutti.			
" "		Guilty as to counts 4 and 5 as to defendant Woodmansee, Sr.			

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C:

123

124

125

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE D		
		(a)	(b)	(c)
1977	(Document No.)			
July 22	The jury was polled by the Court.			
" "	It was ORDERED: that a presentence report and investigation report be made by the U.S. Probation Office.			
" "	Motion made by Mr. Cook to revoke the bail of Mr. Dupaw, followed by Mr. Kittell in opposition.			
" "	ORDERED: Bail as previously set continued in regard to defendant Dupaw, with additional condition that defendant Dupaw not communicate with any witnesses in this matter with the exception of Mr. Persutti and Mr. Woodmansee, Sr.			
" "	Filed deposition of Dr. Martin Flanagan.			
" 29	Filed Motion for New Trial.			
Aug. 16	Filed Subpoena To Produce Document or Object of Sheila Trudo -- returned served.			
Sept. 13	Filed Order - Upon consideration of ex parte application of Deft. Dupaw, by counsel Kittell, the application of subpoenas for the attendance of Kathy Collins Lavallee and Stephen Maranville is granted; The Clerk shall issue said subpoenas; The cause of same shall be paid pursuant to Rule 17(b) FRCP. Copy mailed to attorneys.			
Sept. 13	Filed Opposition of the United States to Motions of Defendants Dupaw, Persutti and Woodmansee for Judgment of Acquittal notwithstanding the Verdict, or in the alternative, For a New Trial.			
" 13	Filed Warrant of Arrest of Defendant - returned served March 31, 1977.			
" 14	In open Court before Judge Holden. Jerome F. O'Neill, Asst. U.S. Attorney, William C. Kittell, Esq., Attorney for defendant.			
" "	Hearing on defendant's Motion for a Judgment of Acquittal notwithstanding the verdict and for a new trial.			
" "	Statements made to the Court by Mr. Kittell, followed by Mr. O'Neill.			
" "	ORDERED: Motions for Judgment of Acquittal notwithstanding the verdict and for a new trial denied.			
" "	Court makes inquiry of Mr. Kittell as to presentence report. Mr. Kittell made statements to the Court re: presentence report, concurred in by defendant.			
" "	Statements made to the Court by Mr. Kittell re: mitigation of sentence.			
" "	Defendant waived statements.			
" "	After sentencing, oral motion made by Mr. Kittell for continuance of bail and stay of sentence pending appeal, followed by Mr. O'Neill.			
" "	ORDERED: Motion granted. Stay of sentence granted. Bail continued as previously set.			

over

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs DUPAW

Cr. 77-19-1

25

Yr. | Date No.

DATE		PROCEEDINGS (continued)	V. EXCLUDABLE C	
		(Document No.)	(a)	(b)
1977				
126	Sept. 14	Filed Judgment Order - - defendant sentenced to eight years on Count 1, eight years on Count 3, eight years on Count 4 and five years on Count 5. Sentence imposed on Counts 1, 3, 4 and 5 are to run concurrent to one another.		
132	" 15	Filed two subpoenas to Produce Document or Object - returned served May 31, 1977.		
133	" "	✓ Filed three subpoenas to testify - returned served June 6, 1977.		
135	" 16	" Deft's Notice of Appeal.		
137	" 21	" Authorization to incur expense of transcript.		
140	Oct. 6	" Scheduling Order--record on appeal to be docketed on or before 1/17/78. Mailed copy to attorneys.		
142	Oct. 18	✓ Filed opposition of the United States to motion of defendant Woodmansee pursuant to Rule 38(a)(2).		
143	" 19	Filed Transcript of trial held June 12 through July 23, 1977, Vols. 1 -7.		
144	" "	Filed Transcript of sentencing held Sept. 14, 1977.		
	Nov. 21	Mailed entire record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attorneys notified.		
1978				
150	Jan. 19	Filed Transcript of hearing held May 6, 1977.		
151	" "	" Transcript of hearing held May 13, 1977.		
	" "	Mailed First Supplemental record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit. Attorneys notified.		
52.	Jan. 24	Filed Authorization Voucher of Court Reporter Herman Vesper for Pre-Trial hearings.		

AO-257

Interval (per Section II) | Start Date | End Date | Ltr. | Comm.

United States of America vs.

JOSEPH H. DUPAW

United States District Court for
DISTRICT OF VERMONT

DEFENDANT

DOCKET NO. ➔

Cr. 77-19-1

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
09	14	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

William C. Kittrell, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a ~~verdict~~/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

SENTENCING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of Title 18 United States Code

§2113(a) and 2 in Count 1. Title 18 United States Code §§2113(a)(d)
and 2 in Count 3. Title 18 United States Code §§2113(c) and 2 in
Count 4. Title 18 United States Code §371 in Count 5.

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

eight (8) years on Count 1, eight (8) years on Count 3, eight (8)
years on Count 4 and five (5) years on Count 5. Sentence imposed
on Counts 1, 3, 4 and 5 is to be served concurrently with each other.

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

D 151 James S. Holden

Filed Sept 14, 1977
CERTIFIED AS A TRUE COPY ON

THIS DATE Joe H. LaVictoire

By Deputy Clerk

() CLERK
() DEPUTY

Date September 14, 1977
BURLINGTON SEP 20 1977 SEP 21 1977

19 July 1977

COURT'S CHARGE TO THE JURY

3711 27

9:10 a.m.

(Crier made proclamation for strict silence in the Court Room while the Judge is charging the Jury)

THE COURT: Members of the Jury, the Court appoints Mr. LYNCH to serve as your Foreman in this case.

This is a criminal prosecution by the United States which is brought against JOSEPH H. DUPAW, ANTHONY PERSUITTI and BERNARD WOODMANSEE, Senior. During the trial the prosecution against the defendant WALL was severed and as appears from the evidence in the case, the defendant WALL entered a plea of guilty to one of the charges.

The fact that the prosecution has taken this course to the Defendant, WALL, must not be considered by you in any way against the other defendants. And also, as I indicated earlier in the trial the prosecution of the charges against BERNARD WOODMANSEE, Junior, has been terminated.

I remind you again that you are not to concern yourself in any way, nor speculate in any manner as to the reason for the termination of the proceedings against Mr. WOODMANSEE, Junior, nor why the younger WOODMANSEE is no longer present at the trial. And the fact that the charges against WOODMANSEE, Junior, have been terminated and other disposition made, should not control or influence your verdict as to the remaining defendants in any way.

I will refer in general terms at this point to the charges that are asserted in the several counts in the indictment. The first count of the indictment accuses only

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the Defendant PERSUITTI and the Defendant DUPAW. It charges that on or about March 27, 1976 ANTHONY PERSUITTI with PAUL CARUSO entered the MERCHANTS Bank, White Street Branch, whose deposits were insured by the Federal Deposit Insurance Corporation, with the intent to take by force and violence from employees of the bank, money and property from the custody and possession of the bank.

The Defendant, JOSEPH DUPAW, is charged with aiding and assisting PERSUITTI and CARUSO in the commission of this offense.

The second count of the indictment has been withdrawn from your consideration by the Court, and the charges asserted in Count Two are no longer before you, so we are not concerned with Count Two in any respect.

As in the third count, the Defendant DUPAW is the only person charged in Count Three. This Count alleges that PAUL CARUSO and DOUGLAS FERRIER on or about May 1, 1976, by force and violence, took from the person and possession of GERALD WHALEN, CHERYL ANN RANNEY and JUDY LeMAY, employees of the MERCHANTS Bank, White Street Branch, cash and checks in the amount exceeding seventy-six thousand dollars, which were in custody and control of the MERCHANTS Bank and that the bank's deposits were insured by the Federal Deposit Insurance Corporation and in so doing, FERRIER and CARUSO, put in danger the lives of the bank employees by means of hand guns. And the Defendant DUPAW is charged with aiding FERRIER and CARUSO in the commission of this robbery.

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The fourth Count of the indictment accuses Defendants, DUPAW and BERNARD WOODMANSEE, Senior, and asserts that during the period from May 1, 1976 to July 1, 1976, were possessing and disposing of property exceeding one hundred dollars in value, knowing the same to have been stolen from the MERCHANTS Bank, White Street Branch in SOUTH BURLINGTON, and that the bank's deposits were insured by the Federal Deposit Insurance Corporation and that each and all of these defendants knew the money was stolen and taken in the bank robbery.

The Fifth and final count of the indictment charges the crime of conspiracy. It alleges that from January first, 1976 up to and including March 31, 1977, the defendants DUPAW, PERSUITTI and WOODMANSEE, Senior, with CARUSO and FERRIER as co-conspirators, conspired and agreed with each other to commit an offense against the United States to receive and dispose of property exceeding one hundred dollars in value, knowing the same to have been stolen and taken from the bank in violation of the criminal laws of the United States.

This count alleges certain overt acts were committed in furtherance and to accomplish the objectives of the conspiracy.

Now, the Defendant DUPAW, PERSUITTI and WOODMANSEE, Senior, have pleaded not guilty to all of the charges that have been made against them.

Now, you will note that the indictment charges

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that the offenses which are the subject of the various counts were committed on or about certain dates. The proof need not be established with certainty the exact date of the alleged offense, it is sufficient if the evidence in the case establishes that the offenses were committed on a date reasonably near to the date specified in the indictment.

A separate crime, or offense, is charged in each count of the indictment. Each charge and the evidence pertaining to it, should be considered separately. The fact that you may find an accused guilty or not guilty as to one of the offenses charged, should not control your verdict as to any other offense charged. And it is your duty to give separate personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely, any evidence admitted solely against some other defendant, or defendants.

Each defendant is entitled to have his case determined from the evidence as to his own acts and statements and conduct and any other evidence which may be applied to him. So, you should consider the case of each defendant as if he were being tried separately and alone and you are not to single out the instructions to any particular instructions as stating the law, but you should consider the charge that is, the Court's instructions, as a whole, and the instructions apply to all defendants unless otherwise indicated.

The fact that the defendants are thus indicted

should in no way influence your verdict.

As I indicated at the outset of the trial, the indictment is nothing more than a formal method of accusing the defendants of a crime, preliminary to trial. A grand jury investigation is necessarily one-sided. The Government presents to the grand jury all evidence in its hands that are favorable to the return of an indictment, whereas, the defendants have no opportunity to present evidence on their own behalf unless they happen to appear and testify.

Now, the indictment is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilty.

You have been sworn, chosen and sworn, as jurors in this case to determine the issues of fact presented by the allegations of the indictment and the denial made by the defendants' pleas of not guilty to each of the counts asserted against them. You must perform this duty without bias or prejudice to any part.

Now, the credibility of the witnesses and the weight to be given their testimony, are questions entirely for your determination. The law is that you are not bound to give the same weight, have the same credit, or the same faith in the testimony of each witness, but you should give their testimony just such weight, just such credit, and have such faith in the testimony of a particular witness that you think it fairly is entitled to receive, and in this, consider their appearance on the stand, their candor or lack of candor, their

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feelings or bias, if any, their interest in the result of the trial, and the reasonableness of the testimony they give and believe as much or as little of the testimony of each witness as you think you ought to.

A witness is expected to speak the truth, but if you reach the conclusion that any witness in the case has willfully or deliberately given false testimony about any material fact, you will reject from consideration all of his or her testimony, or you may accept such part as you may deem to be true and disregard that which you may feel is false.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all of the facts and circumstances in evidence, to determine which of the witnesses are worthy of greater credence.

Now, the testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible to impeach the credibility of the witness and not to establish the truth of these statements unless the prior statements were given under oath, subject to the penalty of perjury and such prior statements are inconsistent with the testimony given at the trial. But it is the province of the Jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

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Yesterday during argument, it was advanced by some of the parties that certain witnesses had not appeared, that the witnesses were absent. If it is particularly within the power of either the prosecution or the defense to produce a witness who could give material testimony on an issue in the case, failure to call that witness may give rise to an inference that his or her testimony would be unfavorable to that party. However, no such conclusion should be drawn by you with regard to a witness who is equally available to both sides of this controversy, or where the witness' testimony would be merely cumulative.

In considering the weight to be given the testimony of a particular witness, you may also consider any demonstrated bias, prejudice, or hostility of a witness, if any there is, toward a defendant, in determining the weight to be accorded to his testimony.

The Defendant, JOSEPH DUPAW and ANTHONY PERSUITTI have elected to testify in their own defense. A witness who wishes to testify, rather a defendant who wishes to testify as a witness, is a competent witness and the defendant's testimony is to be judged in the same way as that of any other witness, keeping in mind the factors which I have just pointed out, that may be considered by you in determining a witness' credibility.

When the defendants DUPAW and PERSUITTI were called by their respective attorneys to give evidence in the case, both testified on direct-examination concerning prior

convictions of certain criminal offenses before the present acts that we have under consideration occurred, or may have occurred.

Now, evidence of a defendant's prior or previous conviction of a felony is to be considered by the Jury only insofar as it may affect the credibility of the defendants as a witness, and must never be considered as evidence of guilt of the crime for which the defendant is on trial.

Mr. PERSUITTI referred to his convictions in the State courts of VERMONT for which he was in confinement at the CHITTENDEN Correctional Center. On cross-examination the Government was permitted to inquire more specifically about that particular offense.

You must not consider Defendant PERSUITTI's answers to these questions as in any way bearing on Mr. PERSUITTI's personal character, or his propensity for criminal conduct. You are restricted in considering this evidence to the limited purpose of determining his credibility and what probative value, if any, it may have had on the question of Mr. PERSUITTI's intent in relation to this element of the offense charged in Count One. That is the offense that it is alleged occurred on March 27, 1976. I will instruct you further regarding the elements of this offense later in the course of the instructions.

The Defendant, BERNARD WOODMANSEE, Senior, did not testify. The law cannot compel a defendant in a criminal case to take the witness stand and testify, and no presumption

of guilt may be raised and no inference of any kind may be drawn from the failure of this defendant to testify.

As I have stated before, the law imposes, never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence. The defendant has the right to elect whether or not he will testify and the exercise of the defendant of that right permits no unfavorable inference of any kind to be drawn. So, in determining the innocence or guilt of Mr. WOODMANSEE, Senior, of the crime charged, you will not, you are not to consider in any manner whatsoever, the failure of this defendant to testify as a witness or to produce evidence in his behalf.

The law presumes a defendant to be innocent of crime with which he is charged. He starts out the trial with a clean slate, so to speak, and this presumption of innocence continues throughout the trial down into the time in the jury's deliberation, if that time ever arrives, when you are satisfied from all the evidence, beyond a reasonable doubt, that a defendant is guilty of the crime charged.

The law permits nothing but legal evidence presented before this Jury to be considered in support of the charge against one accused. So, the presumption of innocence alone, is sufficient to acquit the defendants unless you are satisfied beyond a reasonable doubt of the guilt of any defendant from the evidence in the case.

So it is that the burden of proof is on the

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1 Government to prove each element of the crime charged against
2 the defendants beyond a reasonable doubt and you cannot find
3 any defendant guilty unless you determine the Government has
4 established by the evidence, each and every essential element
5 of the crime charged against him beyond a reasonable doubt.

6 However, to support a verdict of guilty, you
7 need not find every fact beyond a reasonable doubt, you need
8 only find that the crime charged has been proven beyond a
9 reasonable doubt, from all the evidence in the case.

10 A reasonable doubt is a fair doubt based upon
11 reason and common sense arising from the state of the evidence
12 as it appears to you.

13 By proof beyond a reasonable doubt, you are
14 not to understand that all doubt is to be excluded. It is
15 rarely possible to prove anything to an absolute certainty.
16 It must be a substantial doubt such as would make an honest
17 and sensible and fair-minded person hesitate to act in the
18 serious and more important matters wherein the ascertainment
19 of the truth is conscientiously being sought in the more
20 important matters that one would be called upon to act in his
21 own personal life and daily affairs.

22 A reasonable doubt may arise not only from the
23 evidence produced, but also from a lack of evidence and the
24 law never imposes upon a defendant in a criminal case the
25 burden or duty of producing any evidence and since the burden
26 is always upon the Government to prove the accused guilty by
27

proving beyond a reasonable doubt, every essential element of the crime charged.

A defendant has the right to rely upon the failure of the prosecution to establish such proof and a defendant may also rely upon evidence brought out on cross-examination of witnesses that have been called by the Government.

There are two types of evidence which a Jury may consider in determining whether or not a defendant is guilty as charged. One is direct evidence such as the testimony of an eye witness as to what occurred. The other is circumstantial evidence which consists of proof of a chain of circumstances from which a conclusion regarding the essential facts in the case may logically be drawn or inferred. Regardless of the nature of the evidence, whether it be direct or circumstantial, the law requires that before convicting a defendant the Jury must be satisfied of the defendant's guilt by the proof that I have indicated. That is, beyond a reasonable doubt from all the evidence in the case.

Bear in mind that circumstantial evidence is legal and proper for you to consider and you may convict upon this class of evidence alone, if thereby you are persuaded beyond a reasonable doubt of the defendant's guilt. But, the circumstances in that situation must be such as will lead the guarded discretion of just and reasonable men and women to the conclusion that the crime charged has been committed and that a defendant is guilty of its commission.

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Any testimony which has been excluded or which has been stricken from the record is not evidence in the case and you will entirely disregard it in arriving at your verdict. Likewise, as I indicated earlier at the outset of the trial, the arguments of the attorneys and any statements which they have made in their arguments, or during the course of the trial, are not evidence and must not be so considered by you.

You will render your verdict only from the evidence in the case which consists of the sworn testimony of the witnesses and all exhibits which have been received in evidence. It is your recollection of the witness' testimony and not the attorneys statements as to what that testimony was, which shall control you in reaching your decision.

In your consideration of the evidence you are not limited to the bald statements of the witnesses, on the contrary, you are permitted to draw from the facts which you find have been proved. Such reasonable inferences are justified in the light of your own experience.

If you feel that witnesses differed as to what the facts were, it is generally a safer way to reconcile the conflicting testimony if you reasonably can, upon the theory that all of the witnesses are called upon to tell the truth. But if you cannot so reconcile the testimony, then you must determine from all of the evidence before you, which of the witnesses is entitled to the greater credit.

Now, inconsistencies or discrepancies in the

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1 testimony of the witnesses or between the testimony of dif-
2 ferent witnesses may or may not cause you, the Jury, to dis-
3 credit such testimony.

4 Two or more persons witnessing an incident or
5 a transaction may see or hear it differently. And innocent
6 misrecollection, like failure of recollection, is not an
7 uncommon experience with any of us.

8 In weighing the effect of a discrepancy, al-
9 ways consider whether it pertains to a matter of importance
10 or an unimportant detail and whether the discrepancy results
11 from innocent error or intentional falsehood.

12 After making your own judgment, you will give
13 the testimony of each witness such credibility, if any, as
14 you may think it deserves.

15 Some of the witnesses who have appeared before
16 you, and I refer to the witness PAUL CARUSO and DOUGLAS FERRIER
17 and the witness, WALL, were admittedly involved in some of the
18 offenses charged in one or more of the counts alleged in the
19 indictment and have given evidence and informed against some
20 of the defendants. JOHN SAVO also testified concerning certain
21 events he stated that he witnessed.

22 The testimony of an informer who provides evi-
23 dence against a defendant for consideration, for immunity from
24 punishment or for personal advantage or vindication, must be
25 examined and weighed by the Jury with greater care than the
26 testimony of an ordinary witness.

27 The Jury must determine whether the informer's

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testimony has been affected by interest or by prejudice against the defendant.

An accomplice is one who unites with another person in the commission of a crime voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged, on the contrary, the testimony of one who asserts by his testimony that he is an accomplice, may be received in evidence and considered by you, the Jury, even though not corroborated by other evidence. And, it must be given such weight and as you feel it is entitled to receive.

You are reminded, however, that you should, that the testimony of an accomplice must be carefully regarded with caution and considered with care.

Now, an attempt to suppress or to fabricate evidence, either before a grand jury or before this Court, by a defendant, after the crime has been committed is not, of course, sufficient to establish guilt. But you may consider evidence of such an attempt, however, along with the other evidence in the case, in determining guilt or innocence and whether or not attempts of fabrication or suppression of evidence show consciousness of guilt and the significance to be attached to any such attempt, are matters for you and you, alone, to decide.

Some of the witnesses have admitted to giving false testimony under oath on certain occasions when called upon to testify before the grand jury, and the testimony of an

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admitted perjurer should always be considered with caution and weighed with care.

As to the witnesses WALL, CARUSO and FERRIER who have admitted lying to the grand jury or otherwise, in the past, you should consider their testimony and decide whether you wish to accept or reject it in whole or in part.

You may decide, for example, that an admitted liar is unbelievable, or conversely, you may accept his testimony recognizing that in life, there are persons who have lied in the past but are not incapable of telling the truth in the present. Again, this is for you and only you, to decide.

Other witnesses have testified at the trial who are also called to testify before one or more of the grand jury investigations. If you find the testimony given by a witness before the grand jury to be inconsistent with his or her testimony at the trial, you may consider the sworn testimony before the grand jury as evidence of the facts as the witness previously testified under oath.

There has been some evidence presented in the case which we refer to as "expert testimony". In this regard I refer to the testimony of CARL COLLINS of the Federal Bureau of Investigation concerning his examination of various bills and checks, for finger-prints. And Dr. FLANNAGAN who has testified by way of deposition as to the treatment that he afforded the defendant ANTHONY PERSUITTI and has given evidence regarding Mr. PERSUITTI's physical condition in March of 1976. And CATHERINE CUSACK has testified concerning the handwriting

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on certain checks that were received in evidence.

The Rules of Evidence, ordinarily do not permit witnesses to testify as to opinions or conclusions, but an exception to this rule exists as to those whom we call "expert witnesses," witness who by education and experience have become expert in some art, science or profession or calling, are allowed to state their opinion as to relevant and material matters in which they profess to be an expert and they also state the reason for their opinion.

You should consider each expert opinion received as evidence in the case and give it such weight as you think it is entitled to receive. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you feel it is outweighed by other evidence, you may disregard the opinion entirely.

Now, where the genuineness of handwriting is an issue, any proved or admitted handwriting of a person may be received in evidence to be used as a specimen for comparison with handwriting in dispute. Witnesses who claim the special qualifications as an expert on handwriting have testified in this case and the handwriting expert was allowed to express her opinion as to whether the document or signatures in evidence were written by the same person, whether they were genuine, disguised, or altered, by comparing the handwriting in dispute with the proven specimens.

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Ag. It is for you to say what weight you will give to that particular witness.

Evidence relating to any statement or act or omission claimed to have been made or done by a defendant outside of Court and after a crime has been committed, should always be considered with care and caution and weighed with particular attention to all the facts and circumstances surrounding the giving of such statement and all such evidence should be disregarded entirely unless the evidence in the case convinces the Jury that the, beyond a reasonable doubt, that the statement or act or omission was knowingly made or done and a statement or act or omission is knowingly done if it is done voluntarily and intentionally and not because of mistake, accident or other innocent reason.

In determining whether any statement or act claimed to have been made by a defendant outside of court and after a crime has been committed, was knowingly made or done, you should consider all of the circumstances surrounding the giving of this statement or the performance of the act, including the physical and mental condition of the defendant as shown by the evidence and all the circumstances in the evidence surrounding the making of the statement.

If, after considering all the evidence bearing on the point you determine that the statement, act or omission was knowingly made or done, you will give it the weight you think it deserves under those circumstances.

Now in this case, evidence has been received

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concerning certain statements made by the defendant, DUPAW, to Special AGent ZABOWSKY and AXTON.

An admission or incriminatory statement made or an act done by one defendant outside of court, may not be considered as evidence against another defendant, who is not present and so did not see the act done or hear the statment made.

The Court cautions you again, as I did during the trial, that any statements which you may find that the Defendant, DUPAW, made to the AGent of the Federal Bureau of Investigation, are not to be considered against his co-defendant, WOODMANSEE and PERSUITTI.

Tape recordings of conversations between PAUL CARUSO and the Defendant, DUPAW, have been received in evidence. Counsel have used portions of certain transcriptions in questioning the witnesses concerning part of these conversations. The tapes have been received as evidence in the case. The transcripts, that is, the typed testimony of what is recorded on the tapes, are not. And if you perceive any variations between the tape recording and the transcript referred to by counsel, you are to be guided solely by the tapes and not by the reading from the transcripts.

If any of the recorded conversations appear to be unclear, you should disregard that part of the recorded conversation that is unintelligible and consider only that part of the conversation which is clear and which you are certain of its content.

Again, anything said by the Defendant, DUPAW, in the course of these conversations is not to be taken as evidence against Mr. WOODMANSEE or Mr. PERSUITTI.

Having in mind the general guidelines that I have just given you, it now becomes the Court's duty to instruct you as to the particular law applicable to your determinations in the case and bear in mind that it is the sole province of you, the Jury, to determine the facts in this case, and the Court does not by any instructions given to you, intend to indicate to you how you should decide any questions of fact.

It is your duty to decide all the facts from the evidence and all the parties have a right to expect that you will carefully and impartially consider each and all of the evidence that is presented as bearing on the facts in issue and follow the law as stated by the Court.

So, turning to the specific charges alleged and asserted in the several counts of the indictment, the offense charged in the first count is that on or about the 27th day of March, 1976, in the District of Vermont, ANTHONY PERSUITTI the defendant and PAUL E. CARUSO, unlawfully, willfully and knowingly, did enter and attempt to enter the MERCHANTS Bank, White Street Branch, SOUTH BURLINGTON, VERMONT, the deposits of which were then insured by the Federal Deposit Insurance Corporation with the intent to commit in said bank a felony affecting the bank. That is, the taking by force and violence and by intimidation from the presence of the employees of the bank, money belonging to and in the care, custody,

control, management and possession of the bank, and that JOSEPH H. DUPAW, the defendant, unlawfully, willfully and knowingly did aid, abet, counsel, command and induce and procure the commission of this offense by ANTHONY PERSUITTI and PAUL CARUSO, in violation of the provisions of Section 2113(a) and (2), of the United States Code.

Now, the section referred to that I have just indicated, provides that whoever by force and violence, or by intimidation, takes or attempts to take from the person or presence of another, any property or money or any other thing of value belonging to or in the care, custody, control management or possession of any bank, shall be guilty of an offense against the United States.

Section 2113(a) provides that whoever enters, or attempts to enter, any bank or any building used in whole or in part as a bank, with intent to commit in such bank any felony affecting such bank, shall be guilty of an offense against the laws of the United States.

Now, another sub-section of this provision of the Federal Statutes defines the term "bank" to mean any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation.

Count One charges the Defendant, PERSUITTI, as a principal in the commission of the offense charged, and the crime charged against the Defendant, PERSUITTI, has five essential elements, each of which the Government must prove beyond a reasonable doubt. First, that the accused, that is

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PERSUITTI and PAUL CARUSO, entered, or attempted to enter the
MERCHANTS Bank, White Street Branch, SOUTH BURLINGTON, on or
about March 27, 1976.

Second, that the MERCHANTS Bank was insured
by the Federal Deposit Insurance Corporation. And in this
connection, the Government and in proof of this particular
element of the offense, have produced a Certificate of Insurance,
issued by the Federal Deposit Insurance Corporation which
was received in evidence as Government's Exhibit #2.

Third, that the Defendant, PERSUITTI made
entrance to the bank with intent to commit a felony, affecting
the bank. That is, to take money belonging to, or in the care,
custody, control, management or possession of the bank.

Fourth, that the Defendant, PERSUITTI intended
to take the money from employees of the bank by use of force and
violence or by means of intimidation.

Fifth, that the Defendant, PERSUITTI, did the
acts charged against him, willfully and knowingly.

Now, the Defendant, PERSUITTI, has advanced
a contention in argument which he claims is supported by the
evidence and has introduced evidence to this effect, that he
was not present at the time and place where he was alleged to
have committed the offense charged in the first count and
that his physical condition was such that he could not have
committed the entry of the MERCHANTS Bank on March 27, 1976.
And he has introduced evidence to support this contention.

If, after consideration of all the evidence in

the case you have a reasonable doubt as to whether the Defendant, PERSUITTI was present at the time and place the alleged offense was committed, you must acquit him and you must bear in mind that the Government has the burden of establishing each of these essential elements by proof beyond a reasonable doubt and that includes the fact, if it be a fact, that the bank was insured by the Federal Deposit Insurance Corporation.

The Government also has the burden of proving the involvement of the defendant and all other essential elements of the offense as defined in these instructions. One of the elements, of course, is that the bank was entered with the intent to commit a felony.

Intent ordinarily need not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind, but you may infer the defendant's intent from the surrounding circumstances and consider all the evidence of facts and circumstances in the evidence which may indicate the state of his mind at the time and place alleged and you may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of the acts that are knowingly done or knowingly admitted. It is entirely up to you to, as to what facts to find from the evidence in the case as bearing on intent.

Now an act is knowingly and willfully committed as I have previously indicated, when it is voluntarily and intentionally done without mistake, accident or other innocent reason and with the specific purpose of doing what the law

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FORBIDS.

2 Bear in mind that the Court does not charge
3 the Defendant, PERSUITTI, in the first count with actual
4 robbery of the bank. It charges that he entered the bank with
5 the intent to commit the crime of robbery.

6 Count One also charges that the Defendant,
7 PERSUITTI attempted to enter the bank with intent to commit a
8 felony and if you determine that the Defendant, PERSUITTI
9 attempted to enter the bank but failed to actually gain
10 entrance, you may still find him guilty of Count One, but only
11 if you find he did some specific act in an effort to enter
12 the bank with a specific intent to commit a felony by taking
13 money belonging to and in the care and possession of the bank
14 and its employees, by force, violence and intimidation.

15 To attempt an offense means willfully to do
16 some act in an effort to bring about or accomplish something
17 which the law forbids to be done.

18 As to the third element to the offense, there
19 is evidence that CARUSO and PERSUITTI abandoned the robbery
20 before the bank employees arrived and left the bank without
21 carrying out the actual robbery.

22 I instruct you that if you find that PERSUITTI,
23 Defendant, PERSUITTI entered the bank with the intent to commit
24 the robbery, to take by force and violence and by intimidation
25 from the presence of employees, money belonging to and in the
26 care, custody and control of the MERCHANTS Bank, such a taking
27 constitutes a felony, and if you find beyond a reasonable doubt

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1 that the Defendant, PERSUITTI entered the MERCHANTS bank with
2 the intent to rob the bank in the manner and method described
3 in the indictment, even though the actual robbery was not
4 carried out or committed, the offense of entering the bank
5 with intent to commit a felony is established.

6 The first count of the indictment also charges
7 that the Defendant, DUPAW, unlawfully, willfully, and knowingly
8 did aid and abet and procure the entry into the MERCHANTS
9 Bank, White Street Branch on the 27th of March, 1976.

10 The guilt of a defendant may be established
11 without proof that the accused personally did every act consti-
12 tuting the offense charged.

13 The criminal laws of the United States provide
14 that whoever commits an offense against the United States or
15 aids, abets, counsels, commands, induces or procures its com-
16 mission, is punishable as a principal and whoever willfully
17 causes an act to be done, which if directly performed by him
18 or another, would be an offense against the United States,
19 is punishable as a principal.

20 In other words, every person who willfully
21 participates in a commission of a crime, may be found to be
22 guilty of that offense and again, participation is willful if
23 it is done voluntarily and intentionally and with a specific
24 intent to do something which the law forbids.

25 To find the Defendant, DUPAW guilty of the
26 offense charged against him in Count One, the Government must
27 establish beyond a reasonable doubt that the Defendant,

1 PERSUITTI and CARUSO entered the MERCHANTS Bank, or attempted
2 to enter the MERCHANTS Bank on March 27, 1976 with the intent
3 to rob the institution and that the Defendant, DUPAW, volun-
4 tarily associated himself in some way, with the venture and
5 willfully participated in it, as he would something he wishes
6 to bring about, to make the criminal venture succeed and did
7 some affirmative act to help in making it possible for CARUSO
8 and PERSUITTI to unlawfully enter the bank with the intent
9 to commit a robbery.

10 Bear in mind that the Defendant, DUPAW, cannot
11 be found guilty unless you determine beyond a reasonable doubt
12 that PERSUITTI and CARUSO entered the MERCHANTS Bank with in-
13 tent to rob it, and that the Defendant, DUPAW, willingly and
14 voluntarily performed some act to participate in the offense
15 and help it succeed.

16 As I previously indicated, Count Two has been
17 withdrawn by the Court from your consideration, so we will
18 proceed to Count Three. In Count Three, the indictment, of the
19 indictment, the Defendant, JOSEPH DUPAW was charged with aid-
20 ing and abetting PAUL CARUSO and DOUGLAS FERRIER in the commis-
21 sion of the bank robbery of May 1, 1976. This part of the
22 indictment charges that on or about the first day of May,
23 1976, in the District of VERMONT, PAUL E. CARUSO and DOUGLAS
24 FERRIER, by force and violence and by intimidation, did take
25 from the person and presence of GERALD R. WHALEN, CHERYL ANN
26 RANNEY and JUDY S. LeMAY employees of the MERCHANTS Bank,
27 White Street Branch, SOUTH BURLINGTON, property, money and

other things of value, to wit, approximately forty-six thousand, two hundred and seventy-five dollars and seventy-one cents in cash, fifteen thousand, four hundred and seventy dollars in American Express traveler's cheques, and fourteen thousand, three hundred and ninety dollars in First National City Bank traveler's cheques, belonging to and in the care, custody, control, management and possession of the MERCHANTS Bank, the deposits of which were insured by the Federal Deposit Insurance Corporation, and PAUL E. CARUSO and DOUGLAS FERRIER in committing the aforesaid robbery, did assault GERALD R. WHALEN, CHERYL ANN RANNEY and JUDY S. LEMAY and put in jeopardy the lives of GERALD R. WHALEN, CHERYL ANN RANNEY and JUDY S. LEMAY by means of a dangerous weapon, to wit, a hand-gun, and that JOSEPH H. DUPAW did unlawfully, willfully and knowingly aid, abet, counsel, command and induce and procure the commission of this offense in violation of the National Bank Robbery Act.

The Federal statute which relates to this Count provides that whoever, by force and violence or by intimidation, takes or attempts to take from the person or presence of another, any property or money or any other thing of value belonging to or in the care, custody, control, management or possession of any bank, and in committing or attempting to commit this offense, assaults any person, or puts in jeopardy the life of any person by use of a dangerous weapon or device, shall be guilty of an offense against the United States.

There are six essential elements to the crimes charged against Mr. DUPAW in Count Three. First, the act or

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acts of taking from the person of another, money belonging to or in the care, custody, control, management or possession of the bank.

Second, that the bank, that is the deposits of the MERCHANTS Bank, at the time of the taking, were insured by the Federal Deposit Insurance Corporation. Again, as to this element of the offense, the Government has introduced into evidence, Government's Exhibit #2, which you may consider as bearing on this element of the offense, as evidence of such insurance.

Third, that the act or acts of taking such money and traveler's cheques by force and violence or by means of intimidation.

Fourth, the act or acts of assaulting, or putting in jeopardy the life of GERALD WHALEN, CHERYL ANN RANNEY or JUDY LEMARY by use of a dangerous weapon or device while engaged in stealing such money from the bank as charged.

Fifth, that the acts were done willfully.

Sixth, and last element of the offense, that JOSEPH H. DUPAW, aided and abetted in the commission of such acts by PAUL CARUSO and DOUGLAS FERRIER.

Count Three charges that money was taken from the possession of the MERCHANTS Bank, at the White Street Branch in SOUTH BURLINGTON. And the preceding count which I referred to, Count One, charges that the entry, alleged entry of the bank was done with the intent to take money from the possession of the bank by intimidation.

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As to the meaning of these words, as used in the Bank Robbery Act, "possession," the law recognizes as having been of two types. Actual possession and constructive possession.

A person who knowingly has direct, physical control over a thing at a given time is in actual possession of that thing. A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing either directly or through another person or persons, is then in constructive possession of the property.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession, of an item of property or a thing, possession is joint.

If you should find beyond a reasonable doubt from the evidence in this case that at the time and place of the alleged offense, that is the MERCHANTS Bank, that the Bank either alone or jointly with others had actually or constructive possession of the money describe in the indictment, then you may find that such money was in the possession of the MERCHANTS Bank within the meaning of the word "possession" as used in these instructions.

The statute refers to "taking by intimidation." To take or attempt to take by intimidation, means willfully to take or attempt to take by putting in fear of bodily harm.

Such fear must arise from the willful conduct of FERRIER and CARUSO, rather than from some mere temperamental timidity of the victim. However, the fear of the victim need not be so great as to result in terror, panic or hysteria.

In the taking, or attempted taking by intimidation, must be established by truthful proof of one or more of the acts or statements of the accused which were done or made in such a manner and under such circumstances, as would produce in the ordinary person fear of bodily harm. However, actual fear need not be proved. Fear like intent, may be inferred from the statements made and the acts done or omitted by FERRIER and CARUSO and by employees of the bank as well, who were in the bank at the time of the alleged offense and from all of the surrounding circumstances shown by the evidence.

If the Jury should find beyond reasonable doubt from the evidence in the case that the accused willfully committed the robbery of the bank as charged, that is CARUSO, FERRIER and CARUSO committed the robbery as charged, you must be, proceed to determine whether the evidence in the case establishes that CARUSO and FERRIER, in committing the robbery of the bank, assaulted or put in jeopardy the lives of the bank employees, that is, GERALD WHALEN, CHERYL ANN RANNEY and JUDY LEMAY as is charged in the indictment.

Any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent capability to do so, or any intentional display of force, such as would give the victim reason to fear or expect

immediate, bodily harm, constitutes an assault.

An assault may be committed without actually touching or striking or doing bodily harm to the person of another. So, a person who has the apparent present ability to inflict bodily harm or injury upon another and willfully attempts, or even threatens to inflict such bodily harm, as intentionally flourishing or pointing a pistol or a hand gun at another person, may be found to have assaulted such person. But it is not necessary that you find that the fire arm was loaded.

Now the statute refers to, - uses the language "putting in jeopardy of life, by the use of a dangerous weapon or device." A dangerous weapon or device includes anything capable of being readily operated, manipulated, wielded, or otherwise used by one or more persons to inflict severe bodily harm or injury upon another.

So, an operable fire arm, such as a pistol, revolver or gun, capable of firing a bullet or other ammunition may be found to be a dangerous weapon or device.

To put in jeopardy the life of a person by the use of a dangerous weapon or device, means to expose such person to a risk of death, or to the fear of death by the fear of such dangerous weapon or device.

The fifth element of the offense requires the Government to prove that CARUSO and FERRIER acted unlawfully, willfully and knowingly. I have previously described and defined those terms in dealing with the preceding counts.

(H835) CHARGE

The final element of the offense as it relates to the Defendant, DUPAW, is that the Government must prove that JOSEPH DUPAW aided and abetted PAUL CARUSO and DOUGLAS FERRIER by taking some affirmative action to participate and assist CARUSO and FERRIER in their venture to rob the bank, and he must have done so knowingly, and associated himself with the criminal venture and done some affirmative act to make the venture succeed.

If the Government has persuaded you beyond a reasonable doubt of each of the essential elements of the offense charged in Count Three and that the Defendant, DUPAW aided and abetted in the commission of the offense of robbery of the MERCHANTS Bank on May 1, 1976, you may find the defendant guilty on Count Three, bearing in mind the instructions which I have given you regarding aiding and abetting. And, if the Government has failed to establish each of the essential elements of the crime charged in Count Three, you will find him not guilty of the offense of which he has been accused in this Count.

Count Four of the indictment charges that between May one and July one, 1976, in the District of VERMONT, JOSEPH H. DUPAW and BERNARD J. WOODMANSEE, Senior, the defendants, unlawfully, willfully and knowingly did receive, possess, conceal, store, barter, sell and dispose of money and other things of value exceeding one hundred dollars, exceeding one hundred dollars, knowing the same to have been taken and carried away with intent to steal and purloin from the care,

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1 custody, control, management and possession of the MERCHANTS
2 Bank, White Street Branch of SOUTH BURLINGTON, the deposits
3 of which were then insured by the Federal Insurance Corpora-
4 tion, at the time of such taking and carrying away, and that
5 JOSEPH H. DUPAW and BERNARD J. WOODMANSEE, Senior, the defend-
6 ants, knew said money and other things of value to have been
7 so taken and carried away in violation of Sections 2113(c)
8 of Title 18 and Section 2 of Title 18, of the Criminal Laws
9 of The United States.

10 The charge in Count Four is founded on the
11 provisions of Section 2113 (c), which is referred to in the
12 indictment and this particular provision of the Federal Laws
13 provide that whoever receives, possesses, conceals, stores,
14 barter, sells or disposes of any property or money or other
15 thing of value, exceeding one hundred dollars, belonging to
16 or in the care, custody, control or management or possession
17 of any bank, credit union or savings and loan association,
18 shall be guilty of an offense against the United States and
19 the previous section provides that whoever takes and carries
20 away property of value exceeding one hundred dollars belonging
21 to the control or care and custody of the bank, shall be guilty
22 of an offense against the United States.

23 To establish the offense charged in Count Four
24 against the defendants, BERNARD J. WOODMANSEE, Senior and
25 JOSEPH H. DUPAW, the prosecution must prove beyond a reasonable
26 doubt each of the following essential elements: That between
27 May 1, 1976 and July 1, 1976, the defendant whose guilt you are,

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1 or innocence, which you are considering, received, possessed,
2 concealed, stored, bartered, sold or disposed of money or
3 other property of a value exceeding one hundred dollars.
4 That this particular defendant knew the money or other things
5 of value had been taken and carried away with the intent of
6 stealing the property from the possession of the MERCHANTS
7 Bank, SOUTH BURLINGTON, White Street Branch in SOUTH BURLINGTON,
8 that at the time the property was taken the deposits of the
9 bank were insured by the Federal Deposit Insurance Corporation.

10 Fourth, that the defendants acted unlawfully,
11 willfully and knowingly, with the knowledge that the money
12 and other property exceeding in value of one hundred dollars,
13 had been stolen from the bank.

14 Lastly, both defendants are charged with
15 aiding and abetting in the commission of the offense charged
16 in Count Four.

17 If you find that a defendant did not actually
18 commit the offense alleged, but that during the time from
19 May one to July 1, 1976, the crime was in fact committed by
20 someone and the defendant whose innocence or guilt you are
21 considering, aided in its commission by voluntarily and knowingly
22 performing some act that assisted in its commission, then you
23 may find that the defendant is guilty as an aider or an abettor
24 as I have previously explained these terms to you.

25 So it is that the Government is called upon to
26 prove that between the dates in question, May one and July
27 one, 1976, the defendant whose acts you are considering, must

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have had some of the property taken from the MERCHANTS Bank in his possession as I have previously defined the term "possession" to you, or dealt with the property by hiding it or transferring it from one place or another and that the property had a value over and above one hundred dollars.

In this connection, the traveler's cheques that were referred to in the evidence, might be considered to be things of value, even though they were not actual cash.

Now, possession of property recently stolen, if not satisfactorily explained, is ordinarily a circumstance from which the Jury may reasonably draw the inference and find, in the light of the surrounding circumstances shown by the evidence in the case, that the person in possession knew that the property had been stolen. And possession of property recently stolen, if not satisfactorily explained, is also ordinarily a circumstance from which the Jury may reasonably draw the inference and find in the light of surrounding circumstances shown by the evidence in the case, that the person in possession knew it was stolen.

The term "recently" is a relative term and has no fixed meaning. Whether property may be considered as recently stolen, depends upon the nature of the property and all the facts and circumstances shown by the evidence in the case and the longer the period of time since the theft the more doubtful becomes the inference which may be reasonably drawn from unexplained possession.

If you find beyond a reasonable doubt from the

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the evidence in the case that the money and property exceeding one hundred dollars in value described in the indictment were stolen, and that while recently stolen the property was in the possession of an accused, you may, from these facts, draw the inference that you wish. It is your determination as to whether the inference may be drawn, but you may draw the inference that the money and property were possessed by the accused with knowledge that the property was stolen, unless possession of the recently stolen property by the accused is explained to the satisfaction of the Jury by other facts and circumstances in evidence in the case.

In considering whether the possession of recently stolen property has been satisfactorily explained, you are reminded that in the exercise of constitutional rights the accused need not take the witness stand and testify. There may be opportunities to explain possession by showing other facts and circumstances independent of the testimony of a defendant, and you must always bear in mind that the law never imposes upon a defendant in a criminal case, the burden or duty of calling any witness, or producing any evidence.

It is the exclusive province of you, the Jury, to determine whether the facts and circumstances shown by the evidence in the case warrants any inference which the law permits you to draw from possession of recently stolen property.

If any possession of an accused may have had of recently stolen property is consistent with innocence, or if you entertain a reasonable doubt of guilty, you must acquit the

accused of that particular offense.

The second element of the offense is that the money and property must have been shown to have been taken from the bank with the intention of those who carried it away, of stealing the property from the care, custody and possession of the bank. That is, the property must have been taken wrongfully by theft and stealing.

Again, as to the third element, the Government must prove to your satisfaction that the deposits of the MERCHANTS Bank were insured by the Federal Deposit Insurance Corporation at the time when the theft occurred. It is not necessary, however, that the particular defendant you are considering actually knew the deposits were so insured. It is sufficient if indeed the Government has proved beyond a reasonable doubt that the deposits were insured at the time of the taking and possession.

The fourth element of the offense requires that the prosecution prove that the defendant whose innocence or guilt you have under consideration, acted unlawfully and willfully, knowing that the money and property he possessed or dealt with, was money and property stolen from the bank robbery on May 1, 1976.

On this point, it is not enough that the defendant knew the property had been stolen. It must be proved that he had knowledge that the money and property was taken from the MERCHANTS Bank.

The element of knowledge, which the Government

1 is called upon to prove may be satisfied by an inference
2 drawn from proof that a defendant deliberately closed his
3 eyes to what would have otherwise been obvious to him.

4 A finding beyond a reasonable doubt of a
5 conscious purpose to avoid enlightenment, to avoid discovery
6 of true facts, would permit an inference of knowledge. Stated
7 another way, a defendant's knowledge of a fact may be in-
8 ferred from willful blindness to the existence of the fact.

9 It is entirely up to you as to whether you
10 find any deliberate closing of the eyes and the inferences
11 to be drawn from such evidence, if any, but a showing of
12 negligence or mistake is not sufficient to find or support a
13 finding of willfulness and knowledge.

14 I have previously explained the concept of
15 aiding and abetting in the criminal sense, as applied to the
16 prior counts. I will not repeat that here but the same
17 principles apply to this count.

18 If the Government has proved each and all of
19 the essential elements of Count Four, as I have outlined them
20 to you and beyond a reasonable doubt, the offense charged in
21 this Count has been established and the defendants against
22 whom each of the essential ingredients of the crime as proved
23 may be found guilty.

24 If the Government has failed to prove each
25 element by the required proof and the defendant then, then
26 the defendant is found to be not guilty unless you are per-
suaded that the defendant participated by aiding and abetting

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in the commission of the offense charged in the fourth count. Of course, if the defendant did not commit the offense and did not aid nor abet in its commission, he must be acquitted.

Turning to the final count of the indictment, Count Five of the indictment. Count Five of the indictment charges a single conspiracy to commit the substantive offense asserted in Count Four which I have just explained. It is alleged in this final count of the indictment that on or about January 1, 1976, to and including March 31, 1977, in the District of Vermont and elsewhere, JOSEPH H. DUPAW, ANTHONY PERSUITTI, BERNARD J. WOODMANSEE, Senior, the defendant, BERNARD J. WOODMANSEE, Junior and JEFFREY WALL, PAUL CARUSO and DOUGLAS FERRIER named, who are all named as co-conspirators, did combine, conspire, confederate and agree together with each other and with other persons to the grand jury known and unknown, to commit an offense against the United States, to wit, to receive, possess, conceal, store, barter, sell and dispose of property and money and other things of value exceeding one hundred dollars, knowing the same to have been taken and carried away with intent to steal and purloin from the care, custody, control, management and possession of the bank in violation of 18 US Code, Section 2113.

This Count alleges that in furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the District of VERMONT: One, on or about March 27, 1976, ANTHONY PERSUITTI and PAUL CARUSO and DOUGLAS J. FERRIER met at REACH, BURLINGTON, VERMONT.

Two, on April 29, 1976, DOUGLAS J. FERRIER and PAUL CARUSO entered the FRANKLIN-LAMOILLE Bank Branch Office in MILTON, VERMONT.

Three, on April 30, 1976, DOUGLAS FERRIER and PAUL CARUSO met at REACH in BURLINGTON, VERMONT.

Fourth, on May 1, 1976, PAUL E. CARUSO met with JOSEPH H. DUPAW at the CHITTENDEN Community Correctional Center, SOUTH BURLINGTON.

Five, on or about May 6, 1976, BERNARD J. WOODMANSEE, Senior, met with PAUL E. CARUSO in ESSEX JUNCTION, VERMONT.

Six, in May 1976 PAUL E. CARUSO, JOSEPH H. DUPAW, BERNARD J. WOODMANSEE, Junior and JEFFREY WALL, met in WINOOSKI, VERMONT.

Seven, on or about May 24, 1976, BERNARD J. WOODMANSEE, Junior, delivered fifteen hundred dollars in cash to a bail bondsman. Although as I indicated in my earlier instructions, these charges against JEFFREY WALL and BERNARD J. WOODMANSEE, Junior, have been terminated.

JEFFREY WALL and the younger BERNARD J. WOODMANSEE are named as co-conspirators in Count Five along with CARUSO and FERRIER. They remain in the case as alleged members of the conspiracy charged in Count Five and you may consider their participation if any there was, as it may bear on the overt acts alleged in this Count, even though they are no longer accused as defendants in Count Five.

The Federal Statute upon which Count Five is

based is 18 U.S. Code Annotated, Section 271. The concerted action for criminal purposes often makes possible the attainment of ends more complex than those which an individual acting alone could accomplish. It was because of these considerations and other reasons, that Congress made a conspiracy or a concerted action to violate a Federal law a crime. Separate, distinct and different from the substantive offense which may be the object of the conspiracy.

So it is, that the section I have referred to, Section 371, provides in part that if two or more persons conspire to commit an offense against the United States and any one or more of such persons do any act to effect the object of the conspiracy, each is guilty of an offense against the United States.

The offense against the United States in which the defendants are charged with conspiring to commit is a substantive offense charged in Count Four that I have just explained, that is, to receive, possess, conceal, store, barter, sell or dispose of money or property in excess of one hundred dollars value, knowing that such property to have been taken from a bank insured by the F.D.I.C., in violation of Section 2113 (c).

You are to keep in mind the nature of the offense as I have previously instructed in Count Four, that is the object of the conspiracy.

Now, what is a conspiracy? A conspiracy may be defined as a combination of two or more persons who, by

1 concerted action, seek to accomplish a criminal or unlawful
2 purpose or some purpose not in itself unlawful or criminal
3 or by criminal or unlawful means. The gist of the offense is
4 the unlawful combination or agreement to violate the law.

5 Conspiracy has been said to be a partnership
6 in criminal purposes. To constitute a conspiracy, it is not
7 necessary that two or more persons should meet together and
8 enter into an explicit or formal agreement, for an unlawful
9 scheme. Nor, is it required that they should directly, by
10 words or in writing, state the unlawful, state what the unlaw-
11 ful scheme is to be, and the details of the plan are means by
12 which the unlawful scheme is to be carried out.

13 Conspirators, who do not ordinarily put their
14 agreements in writing, nor do they make public their plans.
15 By its nature a conspiracy is usually secret in its origin
16 and in its execution. The agreement is generally a matter of
17 inference deduced from the acts⁷ of the person accused, done in
18 pursuit of an apparent criminal purpose.

19 It is sufficient if two or more persons
20 in any manner or through any contrivance, impliedly or tacitly
21 came to a mutual understanding of the nature set forth in the
22 indictment to commit an offense against the United States
23 and that one or more of them committed an overt act in further-
24 ance of the conspiracy.

25 If two or more persons knowingly work together
26 in any way in furtherance of the unlawful scheme, each partici-
27 pant becomes a member of the conspiracy although his part

therein may be a subordinate one or be executed, carried out at a remote distance or at a different time from other conspirators. All of the conspirators need not originally have conceived the conspiracy or participated in its conception and it is not important who originated the conspiracy. Those who come in later with knowledge of the aims and purposes of the conspiracy and cooperate in a common effort to attain the unlawful result, become parties to the conspiracy.

The offense is a crime when the unlawful agreement or combination is made in any single overt act to effect the object of the conspiracy if thereafter done by at least one of the conspirators is attributable to all of the conspirators, because the act of one conspirator done in furtherance of the conspiracy, becomes the act of all.

Now, the overt act need not be criminal in nature. It may be innocent in and of itself, such as the act of making a telephone call, or operating an automobile. It must, however, be an act which tends to accomplish the plan or conspiracy, and it must be done in furtherance of the object or purpose of the conspiracy.

A conspiracy is not entered as long as the evidence shows intention to continue it. Each alleged conspirator who is the agent of the other at some time during the life of the conspiracy, remains an agent during all of its existence, except that a conspirator has the right to withdraw from the execution of the conspiracy, but withdrawal requires affirmative and effective action to secede from the

criminal venture.

I want to caution you that mere association with one or more of the conspirators, does not make one a member of the conspiracy, nor is knowledge of the existence of the conspiracy without participation, sufficient. It is necessary for the defendant who is charged with this offense, to have actually participated with knowledge of at least some of the purposes of the conspiracy and with the intent to aid the accomplishment of those unlawful ends and that he have some stake in the success of the unlawful enterprise.

So it is that the defendant you are considering under Count Five, must have participated with the specific intent to violate the laws of the United States in the manner indicated in the indictment.

Once you have found, should you so find, that the conspiracy did exist, on a particular defendant to have knowingly participated in it, the extent of his participation whether great or small, is not controlling on his guilt or innocence.

It is alleged in Count Five that on or about January first, 1976 and continuing up to and including March 31st, are the period of the conspiracy. In other words, that it commenced in January '76, and continued through March of this year.

The Government need not prove that the conspiracy existed over the whole course of the time which is alleged in the indictment, if you find that within that period

(H848) CHARGE

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If all of the elements of this crime have been demonstrated to your satisfaction beyond a reasonable doubt, then the crime becomes complete and the fact that the Government did not show it as being carried on as early, or as late as the indictment says, in itself is not of any importance as far as the elements of the crime are concerned.

I have already referred to the overt act but I will repeat that an overt act is any step, action or conduct which is taken to achieve, accomplish or further the object of the conspiracy. The purpose of requiring proof of an overt act is that while parties might conspire and agree to do an unlawful thing, yet they may change their minds and do nothing to carry it into effect, in which event, it will not constitute an offense.

The overt act need be neither a criminal act, nor the very crime which is the object of the conspiracy. It is not required that each conspirator or even each defendant participated in or commits a particular overt act, it is sufficient that at least one overt act alleged in the indictment is performed by any one of the co-conspirators, whether or not he is also a defendant. This is so, for the act of any one conspirator done in furtherance of the conspiracy, becomes the act of all.

Now, whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed and a defendant was one of the members, then the statements thereafter knowingly made and acts thereafter knowingly done

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1 by any person likewise found to be a member, may be considered
2 by the Jury as evidence in the case as to the defendant to
3 have been a member, even though the statements and acts may
4 have occurred in his absence and without the knowledge of the
5 defendant, provided such statements and acts were knowingly
6 made and done during the continuance of the conspiracy and in
7 furtherance of its purpose. Otherwise, any admission or
8 incriminatory statement made or act done outside of court by
9 one person, may not be considered as evidence against any
10 person who was not present and did not hear the statement made
11 or see the act done.

12 Therefore, statements of any conspirator which
13 are not in furtherance of the conspiracy or made before its
14 existence, or after its termination, may be considered as
15 evidence only against the person making it.

16 In the last analysis, there are four essential
17 elements that are required to be proved in order to establish
18 the offense of conspiracy as charged in Count Five:

19 First, the Government must prove beyond a
20 reasonable doubt that the conspiracy described in the indict-
21 ment was willfully formed and was existing at or about the
22 time alleged.

23 Secondly, that the accused whose guilt or
24 innocence you are considering, knowingly and willfully became
25 a member of that conspiracy.

26 Third, that one of the conspirators thereafter
27 knowingly committed at least one of the overt acts charged in

the indictment at or about the time and place alleged.

Fourth, that such overt act was knowingly done in furtherance of some object or purpose of the conspiracy as charged.

If you, the Jury, should find beyond a reasonable doubt from the evidence in the case, that the existence of the conspiracy charged in the indictment has been proved and that during the existence of the conspiracy one or more of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete. And it is complete as to every person found by the Jury to have been willfully a member of the conspiracy at the time the overt act was committed, regardless of whether the conspirator did the overt act.

As I stated before, the burden in this, as in all counts, is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged. The law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence.

If you find that the Government has established each of the essential elements of the offenses of the conspiracy as to the defendant, DUPAN, PERSUITTI and WOODMANSEE, Senior, beyond a reasonable doubt, then that particular accused is guilty under Count Five.

If the Government has failed to establish each and all of the four essential elements of the offense,

(H851) CHARGE

1 beyond a reasonable doubt as to any one of the defendants
2 accused in the conspiracy count, then that defendant is
3 not guilty and must be acquitted of the charge asserted
4 against him in Count Five.

5 A separate crime or offense is charged against
6 each of the defendants in the several counts of the indictment.
7 Each offense and the evidence pertaining to it, should be
8 considered separately. The fact that you may find one of the
9 accused guilty or not guilty of one of the offenses charged,
10 should not control your verdict as to any of the other
11 offenses charged against any of the other defendants.

12 The punishment provided by law for the offenses
13 charged in the indictment is a matter exclusively within the
14 province of the Court. As I indicated, you must never con-
15 sider punishment or any references made to it in the course
16 of the evidence, in any way, in arriving at an impartial
17 verdict as to the guilt or innocence of a particular accused.

18 Remember at all times, you are not partisans.
19 You are judges. Judges of the facts. Your sole interest is
20 to seek the truth from the evidence in the case. You must be
21 fair and impartial as to each of the defendants. You must be
22 fair and impartial as to the Government.

23 It is your duty to follow the law as stated
24 in these instructions, to apply the rules of law so given to
25 the facts as you find them from the evidence, and you will not
26 be justified under your oath as jurors in finding a verdict
27 contrary to the law as the Court gives it to you. But, bear in mind

that it is your sole province to determine the facts in this case and the Court does not by any instructions given, or by any reference to the evidence, intend to suggest to you how you should decide any issue of fact. It is your duty to decide the facts from all of the evidence in the case.

All the parties to this proceeding have a right to expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict.

Your verdict on each count and as to each defendant, must be unanimous. After a verdict has been reached it will be announced by your Foreman in open court when called upon to report your decision.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the Marshal, signed by the Foreman, or by one or more members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the Jury on any subject touching the merits of the case, otherwise than in writing and orally, here in open Court.

You will note from the oath about to be taken by the Marshals, that they too, as well as all other persons are forbidden to communicate in any way or any manner with any member of the Jury on any subject touching the merits of the case.

Bear in mind also, that you are never to reveal

1 to any person, not even to the Court, how the Jury stands
2 numerically or otherwise on the question of the guilt or
3 innocence of the accused until after you have reached a
4 unanimous verdict.

5 If, during the course of your deliberations
6 you need to refer to any testimony of any particular witness
7 you will note that Mr. Vesper has, - the trial has gone a
8 long time and his notes are barricaded right in front of his
9 desk. If you wish to refer to any particular testimony
10 it will take some time to search through the stenographic
11 notes that have been prepared during these many days of trial.
12 So, I'm sure it will be in the interests of all concerned if
13 you will notify the Court, through the Marshal, as to any
14 particular testimony of a witness that you may wish to
15 refer to, to give Mr. VESPER as much advance notice as possible
16 so that he may search out that matter and refer to it, read
17 it back to you here in open court once it's been located.

18 The Court will entertain objections to the
19 charge. (10:47 a.m.)

20 (AT THE BENCH, OUT OF HEARING BY THE JURY)

21 MR. SARTORE: I have nothing, Your Honor.

22 MR. O'NEILL: Judge, we have two points. One
23 was a lack of balance between an accomplice's testimony and a
24 defendant's testimony. A lack of balance between a defendant's
25 testimony and an accomplice's testimony.

26 Secondly, the giving what was, in effect, a
sort of a "Missing Witness" instruction. I recognize that at

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